ANDRÁS HÖFER

THE CASTE HIERARCHY AND THE STATE IN NEPAL

A Study of the Muluki Ain of 1854

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With an introduction by
Prayag Raj Sharma

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Himal Books
Classics

दिल्लीरमण-कल्याणी रेग्मी स्मारक पुस्तकालय
Dillireman-Kalyani Regmi Memorial Library
२०५४ 1997
Kathmandu, Nepal
काठमाडौं, नेपाल

28889

305.5095496
H673t

HIMAL BOOKS CLASSICS/4

First published in 1979 by Universitätsverlag Wagner, Innsbruck, as part of the KHUMBU HIMAL series (Khumbu Himal: Ergebnisse des Forschungsunter-nehmens Nepal Himalaya, vol. 13, no. 2: pp. 25-240), Munich.

Second edition: 2004
Reprint: 2005, February 2012

© 1979 and 2004, main text, András Höfer
© Introduction, Prayag Raj Sharma

ISBN 99933 43 58 7

Himal Books
Himal Kitab Pvt. Ltd.
Regd. office:
Tridevi Marg, Thamel, Kathmandu
Sales outlet:
1981 Tanka Prasad Ghumti Sadak, Maitighar, Kathmandu - 11, Nepal
Tel: +977-1-2120321
info@himalbooks.com • www.himalbooks.com

Printed in Nepal by Jagadamba Press, Hattiban, Lalitpur

हिमाल किताब
Rs. 700.00

To Maheś Candra Regmi

"Manu's contribution consisted largely in the contention that all the rules he incorporated were, if read as if they were part of a truly integrated organic whole, a viable exposition of Vedic learning, and the true norm for all Brahmanically oriented societies to follow. (...) The idea that the state is really concerned (whatever might be the appearances) with the attainment of 'salvation' by each individual, and that it therefore has a spiritual interest in defeating revolutionary schemes, and in keeping everyone to his place (unless emergency conditions justify a departure) is one which would appeal to the public (...) Without denying the past, and without offering anything revolutionary to the future, Manu adopts many archaic pieces which enabled what I have called his 'public' to recognise his bona fides at every few steps." (Derrett 1975: 20-21).

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INTRODUCTION

The Muluki Ain (henceforth MA) of 1854 (promulgated 5 January, 1854), the subject of András Höfer's study, is a document of great historical, legal and cultural interest for scholars on Nepal. For nearly a hundred years since it was first promulgated in the mid-19th century, it remained in force as the prime law of the land by which all people in Nepal, high and low, were supposed to have been judged. Originally, it was simply called *ain*, from the Arabic *a'in*, meaning 'law'. In the later editions dating from 1927, the prefix *mulukī*, again derived from the Arabic *mulk*, meaning 'country', was added, perhaps to distinguish it from several other sundry laws, such as the *gaddī ain* (succession law), *rājkāj ain* (laws relating to rulers, governance and political power) and *jaṅgī ain* (military law) of a more limited nature which too had been formulated by then. The edition on which Höfer's study is based is a 1965 printing of an older manuscript handwritten on Nepali daphne paper, found rotting away in an old government revenue office in the old city of Kathmandu. The social-historical merit of the work was not apparent to everyone at first save to a discerning few in the early years of its publication. It was published two years after it had ceased to be the country's valid law and, in this sense, that was its posthumous publication. In 1963, the MA was replaced by a new Muluki Ain, promulgated by King Mahendra (r. 1955-72), who injected a more progressive social outlook to it. From this time on, all the editions of the MA predating 1963 came to be known as the 'old' MA. The old MA thus became the epitome of orthodox Hindu values, and given to protecting the pre-1951 political order of Nepal as well as the social and religious values it had stood for. With the political change of 1951 and the advent of a democratic order, however, the MA was rendered powerless with one stroke, as it were, as its legal basis was eliminated with the announcement of the Interim Constitution of February 1951.

Höfer's study of the MA is at once bold and novel in approach. Barring a couple of articles in the 1960s and the 70s, which amounted to no more than scratching its surface, no scholar before him had turned his attention to tap the wealth of social and cultural material contained in the MA in an exhaustive manner. Höfer's book is the first-ever attempt by anyone to study the 'anthropology of caste' in Nepal, basing on a written legal document and digressing from the usual field-derived 'village study' method of an ethnographer. In fact, the prospect of cracking a jumble of a document running to over 700 printed pages, using an old form of Nepali language and unfamiliar administrative and legal terms of a bygone century, was a daunting task to undertake. A.W. Macdonald, himself a scholar of no small repute, had dismissed the value of the MA for any detailed study in the late 60s arguing that 'the code [meaning the MA] would not give a picture of the true structure of Nepalese society'[1]. Höfer's study, as we can well see, has fully belied Macdonald's premature assertions. It is obvious that no one else has studied the MA either before or since Höfer at such length and in such depth. This alone is enough to make the present book a landmark research with whose help alone we are able to know the structure of the macro-Nepali society of 19th-century vintage, its legacy running down to our own times still very strongly in many respects.

The primary focus of Höfer's book, admittedly, is to understand the details of the functions of the caste and its behaviour in variable circumstances of inter-caste relationship laid down by the legal clauses of the MA. Normative rules of caste governing social exchanges like marriage and inter-dining are much the same everywhere in the Indian subcontinent. However, what makes the case of MA special is the fact that there is no other instance of caste validation accorded in a legal document of a state like this from anywhere else in the subcontinent. As a natural corollary of the study of caste in MA, Höfer examines the centrality of the role in it played by the state, which we shall touch upon further down. This becomes quite clear from the title of his book.

The kind of state Nepal had been in the 19th century can be gathered from its own claim.

> [It is] a Hindu Kingdom the law of whose
> court maintains that killing of cows, women
> and brāhmans shall not be allowed. [It
> is] a sacred land of the Himavatkhaṇḍa,
> of the holy shrines [dedicated] to
> Vāsukī, the effulgent phallus of Pasupati
> and Guhyeśvarī...It is the only Hindu Kingdom
> in the Kalī Age...(MA:1:1:8)
> (free translation by me).

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[1] Macdonald 1975: 286.

I think it would be pertinent to make some observations here with regard to the Hindu state of Nepal at the time of the MA. While almost the entire Indian subcontinent was in the grip of British colonial rule, only Nepal enjoyed its freedom and independence from colonial subjugation. From the earliest known times of history, therefore, Nepal continued to be an undisturbed Hindu kingdom. Hindu states of different times and different geographical provenance in India had been swept away by the tides of history. It was only in Nepal that a Hindu state managed to survive, and according to its constitution, it still does. The MA furnishes an eloquent testimony to this fact in the most unambiguous terms. Thus the image of Nepal projected in the MA is that of a 'throw-back-in-time' state where traditional Hindu values prevailed in a quite pronounced manner. It is amazing to think that such a conservative Hindu society existed as late as 1951, and remained in a kind of animated suspension for a further 12 years after that. The MA's laws embrace in letter and spirit the values and ideologies taught by the Hindu *dharmaśāstric* texts.

This reflection largely of a 19th-century Nepali state was not just a time capsule, though. In some respects, it did not fail to reflect the times in which it was prepared. In the editions of the MA starting from 1886 it became customary to insert the expression *deśa kāla calan ... vyvahār* in its preamble, meaning that the laws of the MA mirrored the realities of 'the terrain, time, customs ... practices'. All the Rana prime ministers coming in succession from Jung Bahadur have made additions, amendments, corrections and changes with regard to a number of laws, as they felt the need to do it from time to time. New laws, such as relating to printing and publication and several others, expanding with the increased activity of the state, were added. Reforms in some of the laws, however feeble in form, were also carried out within this time. Laws relating to the burning of widows, for instance, or relating to bonded labour were made less harsh. The banning of all types of slavery, whether state or domestic, was accomplished in 1924. Laws relating to economic matters or administrative and court procedures were also of a contemporaneous nature. But with regard to caste relations and avowal of the state to the high Hindu values no attempt was made to change it at any time. It remained as stable as the polity of the state which was an authoritarian monarchy, further exacerbated by the onset of the Rana family autocracy from the time of Jung Bahadur Rana (ruled 1846-77).[2]

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[2] The following general observation by Perceval Landon made in the late 1920s regarding the pre-eminence of the traditional laws relating to caste and others practices such as *satī* and slavery in particular (obviously in reference to the MA) in Nepal in Chandra Shumsher's regime is interesting and revealing not only in terms of the hold such a law exercised in Nepali society of that time, but also in terms of how such laws could be subject to a degree of toning down and modification of their severity by the dictates of the ruler to suit the spirit of the times and circumstances. Landon says: '... the right of a sovereign to change the rules after consultation with the highest spiritual authorities, openly and without concealment. In Nepal the abolition of *sati* is of course the obvious illustration of this inherent right. In India the British simply laid down the law that sati was to cease, and in general it may be said that from that moment it ceased. The British authorities listened to not a word of the defenders of the Hindu

A model Hindu state has four recognised ingredients to it, broadly speaking. These comprise: a) *rājan*, meaning a sovereign king or a ruler in whom all the power of the state resides; b) *rājya* or *rāṣṭra* (Nep. *rāj*), which describes the territorial extent of such a state within a defined boundary; c) *prajā*, which refers to the subjects of such a state; and, finally, d) *sthiti* (Nep. *thiti*), referring to an established social order in the state.[3] This last, in a broad conceptual sense, relates to an order ranging from the abstract notions of a cosmic to a moral, social, and, more pragmatically, a legal order. The MA's paradigm of a state is, more or less, in consonance with these four main ingredients with minor spelling variations in it. Pronounced 'law', the MA was issued with royal seals of assent from the former king, Rajendra, the ruling king, Surendra, and the future king, Crown Prince Trailokya Bikram Shah.

All states, whether modern or ancient, are upheld by the values of an accepted social order to which they have subscribed. Every reigning Hindu king of some ambition at all times of history has seen himself in the role of giving the best social order of his time to his people. In his *Divyopadeśa*, Prithvinarayan Shah (r. 1742-75) refers to such an order as a task unfulfilled by him.[4] Before him, King Ram Shah of Gorkha (r. 1606-36) issued a set of simple rules governing the rural life of his state in the hills of Nepal. In the Nepal Valley of a still earlier historical epoch, King Jayasthiti Malla (r. 1382-95) is remembered mainly for his social reforms. His reforms regulate the Newar society of the Kathmandu Valley even to this day. Before him, King Punya Malla (r. 1332[?]-1338) of the Khasa kingdom of Jumla in his copper-plate inscriptions boasts his familiarity with the *Dharmaśāstra* and *Rājanītiśāstra* works of the ancient Hindu law-givers, such as Gārgyāyaṇa, Gautama, Hārita, Āpastamba, etc.[5] Much before them all, King Amsuvarma of the Licchavi period (606-21) affirmed his abiding faith in the virtues of the Hindu social order

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practice. The abolition of sati in Nepal may be taken, with the modification of the law of purification after possibility of defilement during the War, as an illustration of the reasonable compromise that attends amicable discussions on points that may be affected by religious scruples whenever these seem to stand in the way of the advancement of civilisation in the State. It is the more remarkable because in Nepal there had hitherto been no compromise of any kind for an offence which trespassed the laws of caste. To this day in India a man who loses his caste by infringing its cardinal regulations is sometimes permitted to remain unmolested within its fold by the connivance of the priests. In Nepal, however, there is no escape, and the absolute need of purification in such circumstances is recognised and is a familiar part of the occasional ritual of the Hindu faith. This privilege is one which is based upon the highest and the most ancient authority, and is jealously vindicated by prince and people alike. That a general indulgence was granted to all soldiers detailed for oversea[s] military operations, provided they neither consciously broke the caste-law nor stayed longer than their actual work required, is an illustration of the extent to which the progress of its development has been harmonised with the strictest religious observances. But there is another and even greater proof of this spirit of adjustment which has just been realised, and that is the abolition of slavery.' (Vol II, pp. 162-63)

[3] Abstracted and modified from the Hindu *rājyāṅga* theory. Kangle 1988: pt. I (6.1.1); pt. III: 127.

[4] Naraharinath 1965: 314.

[5] Naraharinath 1965: 761-762.

and its justice system. Despite this long history of Hindu ideologies, there was nothing comparable to the MA—a veritable legal code—in these earlier epochs. The only other work comparable with it in some respects is probably the *Nyāyavikāsinī*, a Newari commentary of the complete *Nāradasmṛti*, written in 1380. This commentary, however, was a mere translation or endorsement in Newari of one of the acknowledged classical Hindu texts rather than an original composition.

In much of the intervening historical period, social order was maintained either on the basis of the dictates of classical Hindu law books directly or through the announcement of periodic royal decrees which also were based again on customary laws or on ancient Hindu laws. These, at later times, were known as *thitibandej* (derived from the Sanskrit *sthiti*). The MA claims that it was basically a compilation of the *thitibandej* issued by various kings in the past. Notwithstanding the king's duty and privilege to establish a *sthiti* in his kingdom, it by no means implied, nor was it ever so understood, that he was a propounder or a legislator of these laws. The true source of all social order was, as we have already mentioned, first, the Hindu *Dharmaśāstra* and, secondly, the *lokadharma* or 'customary law'. The MA has acknowledged this idea as much. Before the codification could take place, Brahman pandits used to be assigned to the legal courts to interpret the *Dharmaśāstra*. In social disputes involving ethnic minorities, all cases were first referred to the local assembly of elders in the respective cultural, ethnic, or linguistic communities. Thus Hindu states have always acknowledged the reality of cultural diversities and accepted these diversities as part of their social universe. Nepal was no exception to this rule. When disputes came up for settlement before the king's court at the centre (Nep. *Bhāradārīsabhā*), they always gave their decisions by deferring to the verdicts reached by the elders of the respective communities earlier. The establishment of a state entity, with attempts at a social structuring and a social order in the tribal fringes of the central Himalaya goes to the credit of the Hindus about two thousand years earlier.

Let us now turn to see the probable reason behind the undertaking to write the MA on the part of the rulers. There is some dispute as to the true source of the MA's inspiration among the historians of Nepal. It was promulgated in 1854 during the reign of Jung Bahadur, four years after his return from his trip to England and France. Hence some see a European inspiration behind its writing, especially from the Code of Napoleon of 1810. Some contemporary British writers, such as Cavenagh, have called Jung Bahadur's MA being more lenient in modes of punishment than in the past. This leniency, however, was true only in respect of punishment for theft. The MA stopped the practice of mutilating limbs for committing theft. This can be gathered from the evidence of the MA itself.[6] Award of punishment in other regards of capital offences, however, continued to be as severe and mediæval, in the tradition of the ancient Hindu practices described in their law books. Punishment, such as by beheading, facial branding with hot iron, or cutting off of noses and ear-lobes in the case of guilty women, remained unchanged in the MA. The Code of Napoleon is the most unlikely source of inspiration, therefore, for the MA. The only point of comparability between the two perhaps lies in their being one comprehensive compilation. Although it is true that the MA is a compilation of civil and criminal laws of its time, by and large, the subject matter and treatment of law in it are befitting a traditional Hindu society of older times. This is what Höfer means by the 'codification of traditional social conditions'.

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[6] MA p. 317 § 68:65.

Recently, a legal historian of Nepal, Revati Raman Khanal, has rejected the idea of any outside inspiration in the drafting of the MA. According to him it took eight long years only to copy the MA in required numbers and to send them out to the various courts outside Kathmandu. The MA was just a huge compilation. Prepared as the first proper law of the country, it tried to be as comprehensive and all-encompassing in its scope as it could probably make itself at the time. So deliberations on it, too, must have taken quite a long time, starting even before Jung Bahadur went on his European tour of 1850. In fact, the motivations for preparing the MA could have come entirely from internal reasons given the need to provide people with a uniform and more accessible justice as part of continuing reforms in Nepal's legal system. Only the Sanskrit-knowing pandits assigned to the duties of the court were able to interpret the texts of the *Dharmaśāstra* on the award of punishment for various offences. Similarly, the *thitibandej* issued by kings of various times were available in scattered and piecemeal forms. The need for their systematisation and standardisation must have been felt by the rulers for some time. In the absence of a uniform code, dispensation of justice must have been an uneven, variable and cumbersome affair. The name *ain*, or 'law', by which the MA was originally called, was not without some significance either since that accorded it a prestige far above any other composition of the day, and, certainly, far more weighty than what a mere *thitibandej* implied. It was the very first state document to be called a 'law'.

There is a fascinating account of how the MA was drawn up, given in a contemporary *vaṁśāvalī* of Jung Bahadur's time.[7]

> His highness Śrī 3 [Jung Bahadur Rana] appointed a Court of Councillors, consisting of nobles, high-ranking officers, royal preceptor and priests; they all deliberated in a group with all their intelligence and by examining all proofs with utmost care, and finalised it in a manner to suit the needs of the times; it was written with a rare clarity and by dividing it in separate clauses; it was better composed than the social order [Nep. *sthiti*] of King Jayasthiti Malla, [and] which even an ordinary child could understand; it was made famous by the name of the *ain*, incorporating in it many laws and making it into a book of law, by putting the seals of the the king and the prime minister in it in order that a system may

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[7] Khanal 2002: 300-301. Free translation by me.

> be established by which all people, high and low, would get their justice equally; from hereon all works of the government and the courts of justice, the acts of rewards and punishments, customs and practices, etc, throughout the Gorkha kingdom shall be carried out in accordance with the [provisions of] the *ain*; the copies of the *ain* were sent to all regional and provincial government offices in the hills, mountains and the plains and [thus] were brought into circulation.

All this goes to show what a big government undertaking the preparation of the MA had truly been? From 1854 until 1872 the MA existed only in a handwritten form. Revisions and amendments in it were reserved and strictly kept in the hands of the Council of Nobles at the centre. Corrections in individual copies of the MA kept in the various courts could be made by hand by the officials of the same courts only. The 1965 publication on which Höfer based his work was one such hand-written copy. The first MA to come out in printed form was in Jung Bahadur's time itself. This edition was printed in a certain Manoranjan Press, a treadle press that Jung Bahadur is believed to have brought from England. It took three years, from 1872 to 1875, to publish the 1038 pages the MA ran to.[8] The MA kept coming out in many subsequent editions too. A strange practice seems to have ensued from the time of Bir Shumsher onwards, which is that a fresh edition of the MA was brought out on the same day a new Rana prime minister took office.[9] The MA was probably seen as conferring on each succeeding prime minister a veritable state power that gave him the right to rule on behalf of the king of Nepal.

Höfer's MA is divided into 163 separate schedules or headings of laws, covering a wide range of subjects in the lives of the people. This highly regarded 'law' in national life enjoyed the highest legal authority. This is borne out by the state's 219 highest-ranked political, civil and army officials who were made to sign the document in endorsement, including the prime minister (Nep. *Sri 3*). The MA exercised an unprecedented power of jurisdiction over all the people of the kingdom, from the high to the low, equally. Some people are led to read a kind of a 'constitution' of the day in it,[10] although we do not know how truly the MA's provisions could be invoked and applied in the case of the members of the ruling class and the upper strata of the society. The idea of a constitution, in my opinion, is too premature for the time we are considering, since political power in those days was decided more by the might of the sword than by provisions of law.

Broadly, MA's laws deal with areas relating to land tenure, economic transactions, such as credit and loan payment, revenue collection and administration, and diverse civil and criminal laws. The readings of these laws give one a distinct impression of 19th-century Nepal as being a pre-modern 'military-agrarian society'. The other image presented by it is that of an overzealous Hindu state extremely concerned with safeguarding the rules of caste within its domain. The MA's idea of a social order consisted of a single social universe recognised in terms of its people of various *varṇa*s and *jāti*s residing in its territory. People of all castes as well as of multiple ethnic, cultural and linguistic groups were all made inclusive parts of it, and ranked in a hierarchy of the high and the low. The basis for the gradation of high and low was embedded in the Hindu ideology of 'pure-impure', a ritual notion. This social universe of the MA was referred to by the popular phrase *cārvarṇa chatisjāt* that the people of Nepal were supposed to be encompassed within.

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[8] Devkota 1967: 21.

[9] Shrestha 1993.

[10] Regmi 2002: 3.

Undeniably, the MA is a product of the times that is close to our own. Its language is full of legal and administrative loanwords drawn from the Arabic and Persian in vogue in the court systems of North India of the Moghul times. As we have already seen above, in several respects it reflects the conditions of the times it was composed in. Notwithstanding that, its one abiding pre-occupation was the persistence of a Hindu caste society by means of the most stringent possible laws. The survival of such a society up to the middle of the 20th century on the support of state authority is what the MA documents in detail. The MA's jurisdictional powers extended and impinged on the domains of what in other societies was regarded as an individual's private and personal spheres. It saw to it that no one broke the rules of caste and his/her allegiance to it, knowingly or unknowingly, voluntarily or otherwise. He/she would not ever be able to breach the MA even as a victim as a result of the acts of another person. If he/she should do it, he/she became answerable to the state, and would have to willingly accept the punishment awarded by the state, which could be light or heavy, depending on the gravity of the offence. The MA is pervaded throughout with these rules providing for a strict caste regime. It even made no qualms about declaring in its preamble that punishment for offences committed shall be imposed in accordance with and befitting 'the status of a person's caste'. There is one whole section relating to *Dharmādhikār*, the highest office of the state adjudicating in caste matters, residing in the king's preceptor (Nep. *rājguru*) that deals in all graphic details about the compromising circumstances and all possible manners of the violation of caste rules, the methods of its restitution and restoration, and the levy of punishment for it.[11]

The *Dharmaśāstra* lay down their injunctions in more impersonal and idealistic terms since they were not written as laws for a specific temporal state. The MA's case, however, stood quite apart from this. For the laws of the MA were meant to serve as a designated state's tangible laws. The state represented by the MA exercised total monopoly over these laws. The MA served not only as its prime tool of social control, but also a good source of income for the state. For the *Dharmaśāstra*, observation of caste rules, as any other rule for that matter, was looked upon as being the 'duty' of a person. The breach of this 'duty' amounted to a breach of *dharma*, which was far more binding on a person, morally and ethically. For this breach he or she was not only answerable to himself or herself, but also to the state, the supreme guardian of the *dharma*. The state for its part was answerable to a 'higher' divine power in the preservation of these rules. If the state (king) did not live up to its obligation, it would mean a breakdown of order, including cosmic order,[12] the furthest abstraction from which the Hindus' concept of their *dharma* is ultimately derived. These indicate vestiges of a Hindu state of earlier times. Thus, while the enumeration of the caste groups of India of modern times was made by the British-Indian administrators directly from the field, such a dossier on Nepal derives straight from an official state document.

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[11] MA pp. 379-406 § 89.

Let me delve a little into the MA's possible inspirational links with the texts of the Hindu *Dharmaśāstra* and *Nītiśāstras* (in MA, *nītismṛti*). This link is not merely inferential, but quite apparent. In fact, it could even be said that the MA in many respects is distinctly an heir to some of these classical works. For instance, many sections in the MA are not only similar to Kautilya's *Arthaśāstra* in the treatment of their subject matter, but sometimes also identical in their subject headings. The 3rd and 4th books of the *Arthaśāstra*, for example, that deal with the subject of 'judges' and 'suppression of criminals' deal with identical matters, such as on 'intended rape of a woman', 'gambling', 'incestual relations' or 'sexual intercourse with women of lower castes' (*varṇa*).[13] Similarly, the 'eighteen *mārga*s' or *vyavahārapadas* of the ix book of *Manusmṛti*, dealing with the nature of offences and disputes involving people, offer close parallels with the MA.[14] According to Julius Jolly, the *vyavahāra* chapters of the *Nāradasmṛti*, a mediæval period treatise of Hindu law, is actually an abridgement of *Manusmṛti*.[15] The *Nyāyavikāsinī* is a 14th-century Newari commentary of the *Nāradasmṛti*.[16] Jolly says that chapters on 'theft' and 'trial by ordeal' treated in the *Nāradasmṛti* are found only in the manuscripts in Nepal.[17] Trial by ordeal was an extremely popular form of criminal court procedure followed in Nepal until the times of Bhimsen Thapa (1806-39). The various types of capital punishment and corporeal punishment, starting from death by beheading, branding of face, limb mutilation, and caste degradation all seem to take their cue from the old *smṛti* texts. Hodgson makes an interesting observation relating to criminal prosecution procedure in Nepali courts. According to him, before pronouncing an acused guilty of his crime, it was absolutely essential to acquire a 'confession of guilt' (Nep. *kāyalnāmā*) from him. The uniqueness of the Nepali legal system of the 19th century lay here, he says, which did not exist even in the European legal system of the time.[18]

Punishment by the state (king) to offenders was not meant to act only as a deterrence to crime, but was believed to have cleansing properties or merit to it.

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[12] Lingat 1973: xii-xiii.

[13] Kangle 1988: pt. II: 190-291.

[14] Lingat 1973: 81-83.

[15] Jolly 1977: xi.

[16] Sharma 1997: 128, 135-36 fn. 2.

[17] Jolly 1977: 223.

[18] Hodgson 1834: 45-56.

All offences were seen not only as wrongdoings committed against the person concerned, but a crime committed against the state. If crimes went unpunished, it would bring sins to the state and render it unholy. For the king to let this happen would amount to failing in his 'kingly duties' (Sans. *rājadharma*). The office of the *Dharmādhikār* mentioned in the MA[19] was quite a powerful one,[20] and had its presence felt throughout the territory of the kingdom through its multifarious agents. Punishments that were lighter in form and did not lead to permanent caste degradation were administered by the office of the *Dharmadhikar* by offering the wrongdoers *patiyā* and *cāndrāyaṇa* penitence. The *cāndrāyaṇa* was like a compulsory toll payable by all householders annually. Collected even from the poorest of the kingdom, it required people to rid themselves of their sins that may have accrued to them unconsciously. This is where the state saw an ample means of richly exploiting the injunctions of the *Dharmaśāstra* to increase its revenue. Unlike in the classical law books in which all laws are invoked in the name of the king, such a style is not adopted by the MA. The *Dharmādhikār*'s office is given the responsibility to carry out this kind of punitive duty, which amounts to the same thing in essence. It should be mentioned here that obtaining the prior assent of the king in the case of capital punishment was essential before it could be carried out.

The concept of social order and harmony was an integral part to the ideology of a Hindu state, which translated into a scheme of a hierarchy of castes on the ground. The state defined this hierarchy, which it considered its prerogative. The MA's hierarchy is a single national hierarchy valid for the state as a whole.[21] The *Dharmaśāstra* themselves do not ever speak in terms of a universally followed hierarchy of castes. They talk of social categories in terms of the four *varṇas*, which to them remains a standard tool of reference to use across all time and space. In the *varṇa* system of social classification too the notion of hierarchy is implicit no doubt. Beyond that, in the context of empirical caste studies in any region of India, a uniformly accepted hierarchy is difficult to find. It varies from region to region and seems influenced by the politically and economically dominant caste group or groups living in a particular region. The MA's testimony on caste hierarchy is therefore a good means of knowing how a Hindu state worked in defining its hierarchical order. Its hierarchy ascribed rankings not only to individual castes, but also to social categories into which comparable caste and ethnic groups were ranged together. The MA does not omit to mention in its national hierarchical ranking even such non-caste aliens as the 'musulman' and the '*mleccha*' (European), designating them as a caste as well.

Thus from the evidence of the MA we know what role the state played as the main arbiter in caste matters. Consequently, we do not see the existence of the autonomous, grassroot caste assemblies at the village level like in India[22] in Nepal. The caste Hindus of Nepal, especially the Parbatiya Hindus, were directly under the purview and control of the state, exercised through the medium of its courts. Notwithstanding the rules of punishment MA provides in some detail for illicit sexual relations involving Newar women of high and low castes or in regard to their miscegeny (in section under *misākhat*),[23] it may be presumed that autonomy in the case of Newar caste matters was respected and left to their own caste members in their respective *guṭhīs* to be settled. Much in the same manner the customs and clan traditions of the various minority ethnic groups were also duly recognised by the MA. But their autonomy had to stop where these customs impinged on some of the avowed high Hindu values. Practice of levirate, for example, was discouraged, and the killing of cows, banned.

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[19] MA 89: 379-406.

[20] Hodgson 1834: 45-56.

[21] Sharma 1993: 364-76.

[22] Mayer 1970: 251ff.

To find a satisfactory equation between the *varna* and the caste is an unresolved dispute among anthropologists. The MA is seen to integrate these two terms through the use of the idea of *cārvarṇa chattisjāt*. It may thus be possible to surmise from it the closeness between these two terms and see how they had informed one another. Another significant point to note is the MA's predilection for brevity in dealing with the number of castes The totality of Parbatiya castes runs to barely a dozen and a half. This is in glaring contrast to the long list of caste names found in the Newar society of the Kathmandu Valley[24] and among the Madhesis of the Tarai. The MA has taken no serious cognition of these castes except *en passant*. At the same time, rules regarding the different names assigned to the *varṇasaṁkaras* ('mixed castes') in the *Dharmaśāstra*, are not heeded by the MA. Like the *Dharmaśāstra*, the MA holds all hypogamous marriages in total abhorrence, but is tolerant towards hypergamy, if it is done within the 'clean' castes. Hypergamy, because its practice was so common, was accepted as a fact of life. With the exception of the Brahman's offspring, children born of all hypergamous marriages were adjusted within the father's caste. This was the rule of thumb granted by the MA. The middle order caste list among the Parbatiya Hindus is not allowed to run too long, and so, most *varṇasaṁkaras*, or children from hypergamous marriages, were adjusted within the Chhetri caste. A short list of castes among the Parbatiya Hindus could also be a legacy of its less complex, less economically diversified, hill agrarian society.

I should briefly like to touch upon a unique law that the MA deals with. This was a frequently invoked law in the Nepali society of the MA. It refers to the 'killing of one's wife's seducer'.[25] Seducing another person's wife was an offence committed against the state (Nep. *rājakhat*) in the definition of the MA. This is yet another good example of how little distinction the MA made between the public and private domains of jurisdiction. However, for an overzealous guardian of a Hindu state, this law is not wholly inconsistent with its overall spirit. The MA's laws are overly obsessed in dealing with sexual relations between men and women among various caste and age groups. In a state where such relations were kept regulated strictly by the rules of caste, furtive liaisons between a man and a woman could not remain overlooked. Such an act hurt the pride of a husband, but, in its more serious implications, it compromised the caste of the family if it were allowed to go unpunished. The MA has, therefore, given the wronged husband the right to kill his wife's paramour. If he caught them in the middle of the act, he could kill the lover on the spot. The court could be notified of the act afterwards. The court would also order the nose of the wife to be cut off, and degrade her from her caste. If his wife's affair happened in his absence, and got established through her confession later, the husband asked the right to kill the paramour (Nep. *jārhānne*) with the permission of the court, which was granted. This was deemed a privilege reserved to a few high castes and recognised martial groups only such as the Thakuri, the Chhetri, the Magar, the Gurung and the Sunuwar. Brahmans were not included in it because they were thought to be a peaceable caste. For the other castes, they had to be content with getting a cash compensation for it. The *Dharmaśāstras* themselves are totally silent on this score. The source of *jārhānne*, therefore, may have been different, although its practice too seems pretty old in Nepal. Its origin perhaps lay with the old Khas tribes, who are supposed to have entered western Nepal from the Himalayan foothills further west in Garhwal, Himachal Pradesh, Kashmir and, eventually, even Central Asia.

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[23] MA pp. 644-652 § 145.
[24] Sharma 1993: 364.
[25] MA pp. 602-608 § 134; pp. 629-37 § 141.

Having introduced the historical character and the documentary value of the MA at some length, it may be apt to consider next the change in perception in which it has been held at different nodal points of Nepal's political development in the duration of a century and a half. Between 1854, the date of MA's promulgation, and 1955, in which its last edition came out, it did undergo occasional alterations, additions and revisions, as we have already mentioned. But these changes were not of a substantive nature and little affected the character of a Hindu society nurtured in the *sanatan* Aryan tradition. The social values preached by the MA, however, were proving restrictive, anachronic and out of step with the spirit of times. They were seen as a potent instrument of Rana political repression. In the the third decade of the 20th century, the educated middle class youth of Kathmandu started an anti-Rana political movement which increasingly gathered force. When the Ranas did fall from power eventually following the popular movement of 1951, the MA fell into a state of limbo. It ceased to be a legal authority and its provisions were no longer binding. Caste rules relating to food, drink and inter-caste marriages were openly flouted. But the MA had not been officially abrogated. In 1960 Nepali politics returned once again to the monarchical system under the Panchayat. However, the conservative politics could not put the clock back on the aspirations for social change. King Mahendra had to, therefore, take a progressive stance and promulgate a new Muluki Ain to replace the old one. This new Muluki Ain of 1963 did away with the legal recognition to caste, and all the discriminatory laws made on the grounds of caste. It is quite true that with the promulgation of the new Muluki Ain caste feelings have not entirely ceased to exist in the Nepali society, but they have been relegated from the public to the private domains of the people now. The legacy of caste will be hard to be erased from the minds of the people. Actually, it might even find new modes of survival in a democratic polity, as we can see it happening in India.

For 30 years the Panchayat regime made 'social harmony' and 'unity in diversity' its main social and political rhetoric. Its Constitution of 1962 called Nepal a 'multi-ethnic', multi-cultural' and a 'multi-linguistic' Hindu state. A Hindu ethos under the Hindu monarchy dominated the national life of Nepal during this period. Towards the closing years of the Panchayat regime, the politics of Nepal assumed a new dimension accompanied by a growing demand for the end of the Panchayat and its replacement with a multi-party democratic rule. This was also the time of the emergence of a strident ethnicity in the political horizon of Nepal. With the dawn of the multiparty democracy in 1990, the smooth democratic transition of Nepali politics has been hit by a political turmoil of all kinds, the latest being the Maoist armed insurgency in the country. There is an extreme polarisation in the politics of Nepal today between monarchical democracy and republicanism. In these extremely volatile times, the caste reforms of the new Muluki Ain have lost their relevance and topicality. More pressing issues of social change and social structuring have come to replace it and have assumed a new urgency. The MA's Hindu legacies remain repudiated. The wisdom of the label 'Hindu state' is cast in doubt. There is an aggressive ethnicisation of all social, cultural, linguistic and political issues by the various ethnic groups, designated as the *matawālīs* in the MA, who blame it on the state for most of the wrongdoings in the past. The strident ethnic demands seem to question everything today, including Nepal's history of integration started by Prithvinarayan Shah. The new Muluki Ain of 1963 made far-reaching changes from earlier times with regard to women's sexuality, and their social and economic status. Women's empowerment and gender rights groups in the recent decades have called these changes insufficient. They want changes in all the discriminatory laws against women in the new Muluki Ain in consonance with the Constitution of 1990. In the 90s, women of Nepal have been given increased representation rights in public offices as well as new property and social rights at a level they had never enjoyed before. This has rejected the relevance of the 1963 Muluki Ain in the spheres relating to the traditional image of Hindu women. Thus the values of Nepal's old society contained in the old MA, and its lingering vestiges reflected in the new Muluki Ain, have become non-issues at many levels since 1990. Höfer's study of MA mirroring a vanished society of a bygone century constitutes a last major work of scholarship on Nepal's most illuminating period document.

Prayag Raj Sharma
Māghe Saṁkrānti, 2059 (15 January, 2003)

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PREFACE TO THE SECOND EDITION

In 1975, when I began preparing my files for the original edition of this book, caste was still one of the central issues in the anthropological discourse on South Asia. Its definition, ideological foundation, social and economic *raison d'être* were the subject of a controversy between empiricists, functional-structuralists, cultural anthropologists, neo-Marxists, Weberians and some others, and feelings ran high when it came to taking a stance on Louis Dumont's theory as developed on the pages of *Contributions to Indian Sociology* and expounded later in his influential and erudite *Homo hierarchicus*, which was first published in French in 1966. Most of the anthropologists were relying on empirical evidence drawn from modern field research and the older colonial "census ethnography". With the notable exception of Dumont, anthropologists showed relatively little interest in exploiting traditional Indian legal sources. Their reticence, one is tempted to suspect, was not least conditioned by the partly justifiable conviction that the *dharmaśāstra* literature reflected historically remote stages of development, and that, consequently, present-day caste societies—with all their regional and sectarian or confessional differentiations, complex economic and political infrastructures, intertwinements with kinship, marriage, occupation, patronage, etc—could not be adequately understood by recourse to the ancient *varṇa* model alone. And since a systematic codification of the present-day caste societies was not to be found in *more recent*, post-classical sources written by Indians, a more or less consistent representation of the "indigenous" conceptualisation of caste society remained beyond the anthropologists' grasp.[1]

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[1] Dumont himself deplored the lack of such evidence in a conversation while I happened to be attending his class just at the time when his *Homo hierarchicus* was in the making.

This insight proved decisive for me in 1971 when I encountered the Legal Code (Muluki Ain) of 1854, in a reprint edition,[2] for the first time. At once it revealed itself as a grand, astonishingly comprehensive attempt at "society building" in a particular country and a particular period of history, unique in its kind, above all in view of the, in part, detailed substantiation it gives for establishing and sanctioning the hierarchical stratification of social groups within a multi-ethnic society. It was rewarding to see to what extent and with what degree of consistency the opposition pure/impure had been applied in the Code, long before Western sociology came to recognise it as a basic, generative structuring principle of caste—and even more rewarding to learn from a tradition-guided Nepalese legislator that caste in South Asia was an intrinsic social category, rather than a mere construct of colonial administrators or "orientalist" intellectuals, as some authors would have it today.

Of course, I wish I were in a position to re-write this book nearly twenty-five years after its first publication by taking advantage of the considerably increased literature in general, of the progress of theory in particular and, above all, of the unprecedented availability of historical documents which both Nepalese and Western scholars have since then made accessible to the public. It is no small comfort to me that, fortunately, the Code of 1854 and its successors, first "discovered" by anthropologists,[3] have over the past twenty or so years been the subject of thorough studies by Indologists and law historians. It would lead too far to list all the literature dealing with, or at least referring to, the Nepalese codes.[4] Apart from R.R. Khanal's recent substantial work on Nepal's legal history, extensively discussed by P.R. Sharma in his Introduction to this volume, the studies of Jean Fezas and Axel Michaels deserve to be mentioned first. Fezas's *Le Code Népalais*[5] renders the entire contents of four manuscript versions of the Code of 1854 in abundantly annotated transliteration and includes an introduction of nearly 50 pages on the contents, predecessors and sources of the Code, the circumstances of its composition and application. Prior to this monumental undertaking in two volumes, indispensable for the future student of Nepalese law, Fezas published a number of articles devoted to issues, such as sodomy, suttee, the customary right of the husband to kill his wife's seducer, or property and inheritance.[6] To Michaels we owe in-depth analyses of the regulations regarding suttee, the protection of the cow and the office of the *dharmādhikār*.[7] Both Fezas and Michaels arrive at illuminating findings by treating Nepalese legislation and judiciary within the broader comparative framework of the Indian legal tradition. While the author of *The caste hierarchy and the State in Nepal* had at that time to content himself, by necessity, with relying on the 1965 reprint edition of the Code of 1854, Fezas's and Michaels's works, carried out later, are based on a source-critical synoptic reading of its printed and older, originally handwritten versions.[8] Re-examined in the light of the considerably widened perspective on the textual history of the Code itself, and of a host of new data provided by palaeography and epigraphy for comparison, some of the conclusions drawn in *The caste hierarchy and the State in Nepal*, especially in chapters 1, 17 and 18, may turn out to have been quite preliminary, incomplete or even erroneous efforts at interpretation. Needless to say, this is not an attempt to put the blame for any possible inability of mine on the initial research situation alone.

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[2] The reprint edited by the Ministry of Law and Justice and published in 1965 (BS 2022), see Chapter 1.

[3] Marc Gaborieau, in 1966, and Alexander W. Macdonald, in 1968, were the first to draw attention to the legal codes as important sources for ethnographic studies.

[4] It may be noted in passing that over the past two decades, "Muluki Ain" as a name and notion has become widely known even outside the academic realm. A search for "Muluki Ain" in the internet (http://www.google.de) in May 2003 produced about 595 hits from a variety of sources, including excerpts, infos, news, pamphlets, homepages, newspapers and the like.

[5] Fezas, Jean: *Le Code Népalais (Ain) de 1853*. Vol. I. *Introduction et texte—chapitres 1-86*. Vol. II. *Texte—chapitres 87-167*. Corpus Iuris Sanscriticum, vol. II, Sanskrit Series on Social and Religious Law, edited by Oscar Botto. Turin: Unione Accademica Nazionale 2000.

[6] See, i.a., (i) Perversion et hiérarchie au Népal au XIXe siècle. Un chapitre inédit du code de 1853 : Gāṛ Mārā-ko (de la sodomie). *Journal Asiatique*, CCLXXI, 1983, no. 3-4 : pp. 281-344.—(ii) Satī

I wish to thank Prayag Raj Sharma for his generosity in contributing an unconventionally detailed Introduction to the present edition. His essay, concise and exhaustive at the same time, on the origins, contents and general setting of the Code of 1854, aptly highlights some novel aspects as revealed by recent research and as assessed from his, a Nepali historian's, own viewpoint. I am also indebted

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[7] See, i.a., (i) Widow burning in Nepal. In Toffin, Gérard (ed): *Nepal, past and present. Proceedings of the Franco-German Conference, Arc-et-Senans June 1990*. Paris: CNRS Editions 1993. Pp. 21-34.—(ii) The legislation of widow burning in 19th century Nepal. *Asiatische Studien/Etudes Asiatiques, Zeitschrift der Schweizerischen Asiengesellschaft/Revue de la Société Suisse-Asie*, XLVIII, 2, 1994: pp. 1213-1240. The article includes a source-critical edition of the paragraphs concerned in the Code of 1854.—(iii) The king and cow: On a crucial symbol of Hinduization in Nepal. In Gellner, David N., Pfaff-Czarnecka, Joanna, and Whelpton, John (eds): *Nationalism and ethnicity in a Hindu kingdom. The politics of culture in contemporary Nepal*. Amsterdam: Harwood Academic Publishers 1997. Pp. 79-100.—(iv) Kuhschützer und Kuhesser. Verbote der Rindertötung in Nepal nebst einer Kritik der Kulturökologie von Marvin Harris und einer Edition des Kapitels Govadha garnyā im Muluki Ain von 1854. In Wezler, Albrecht (ed): *Die indische Idee der Gewaltlosigkeit. Zur Beziehung zwischen Mensch und Natur in Indien*. Hamburg: Institut für Kultur und Geschichte Indiens und Tibets. Forthcoming.—(v) The pandit as a legal adviser. Rājguru, rājpurohita and dharmādhikārin. In Michaels, Axel (ed): *The pandit. Traditional scholarship in India*. Delhi: Manohar 2001. Pp. 61-77.

[8] Neither these handwritten versions, now kept in the National Archives in Kathmandu, nor the first printed edition of 1871 were accessible to me when I began writing the book. None of my informants knew of the existence of the former.

to the late Dieter Conrad, to Marc Gaborieau, Donald A. Messerschmidt and Prayag Raj Sharma for their critical comments in reviews and personal communications concerning the first edition of this book, and to my wife Sylvia for her invaluable technical assistance. From the day back in April 2002 when Himal Books contacted me to express its interest in bringing out a reprint of *The caste hierarchy and the State in Nepal*, I have found in Deepak Thapa a most cooperative partner. His pragmatism in planning and efficiency in implementing have indeed been of great help in the production of this slightly revised second edition.

András Höfer
Heidelberg, July 2003

ACKNOWLEDGEMENTS

The present study and many years of research on and in Nepal could not have been realised without the generous grants of the German Research Council (Deutsche Forschungsgemeinschaft) and the Thyssen Foundation, nor without the unique facilities the South Asia Institute (Südasien-Institut) of the University of Heidelberg has offered to me.

I wish to thank, first of all, Karl Jettmar, the head of the Department of Ethnology at the South Asia Institute, for supporting my work during the last decade; Bisṇu Prasād Śresṭha, both friend and field assistant, who never hesitated to criticise my premature conclusions and whose help in gaining access to Nepal was invaluable; and my wife, Sylvia, for preparing the manuscript with much critical care. I owe a lot to my colleagues in Paris, Heidelberg, Munich and London; to my former teachers, Lucien Bernot and Alexander W. Macdonald, who initiated me to ethnographic research, to Corneille Jest, Marc Gaborieau and Philippe Sagant who helped me greatly with their personal communications and criticism; to Dieter Conrad, Hermann Kulke, Jürgen Lütt and Günther D. Sontheimer of the South Asia Institute, László Vajda of the University of Munich and John Duncan Derrett of the School of Oriental and African Studies who read and discussed the manuscript. Gérard Toffin (Paris), Véronique Bouillier (Paris), Siegfried Lienhard (Stockholm) and Linda Sue Stone (Brown University) were kind enough to supply their publications so promptly. My thanks are due to Julius Speer and Helmut Heuberger for their practical aid in getting the manuscript published, and to Jacqueline Schäfer (née Lewis) for correcting my English. Last but not least, I wish to thank my informants and helpers in Nepal: Śer Bahādur Mamba Tāmāṅg, Phurman Yonjen Tāmāṅg, Man Lāmā Blenden Tāmāṅg, Lāl Bahādur Koirāl Kāmi, Kristo Lāmā Moktān, Sahadatta Gajurel Jaisi, Āśā Rām Śākya, Buddha Ratna Śākya,

the families of Siṅgh Bahādur Blenden Tāmāṅg, Bam Bahādur Mamba Tāmāṅg, Bekhā Ratna Śākya and Rām Dās Amātya, the officials of the Madan Puraskar Library, of the Ministry of Law and Justice of HMG and of the Tribhuwan University, the staff of the Swiss Association of Technical Assistance as well as all the employees of the Nepal Research Centre, to mention just a few. Erwin Schneider's generosity and joyful company during many days in Nepal is gratefully remembered.

The recent publications of Bouillier (1978), Gaborieau (1977) and P.R. Sharma (1977) reached me too late to be discussed in the manuscript which was completed in January 1978. They all are important contributions to the study of the Muluki Ain, throwing light on many details which either escaped my attention or are beyond the scope of the present book.

Heidelberg, South Asia Institute
September 1978

A.H.

INTRODUCTORY

The present book is an anthropological study. It will show how a caste society was conceptualised by its members themselves in the legal code Muluki Ain (henceforth MA) of 1854. An attempt should be made to analyse a) the cognitive mapping of the caste hierarchy; b) the implications of the ascribed status; c) the interdependence of the status dimensions such as caste, social estate, kinship, etc; d) the substantiation of the hierarchy by the legislator; and e) the question how the categories of a model, which claims to be orthodox-Hinduistic, were applied to a society culturally as heterogeneous as was Nepalese society in the mid-19th century.

Certain limitations are unavoidable, and many of the conclusions presented here are of a preliminary character. It goes without saying that a source such as the MA with its nearly 700 pages cannot be exhaustively dealt with. The MA also contains a number of aspects, the elucidation of which will devolve on the Indologists, jurists and historians. To delve into them would not only go beyond the scope, but also beyond the competence of the author.

The student's task is no doubt further complicated by numerous gaps in the material of the MA. Contemporaneous documents, which could help us in closing such gaps, are accessible to a limited extent only.[1] Comparative analysis must therefore make use of modern ethnographic material, the bulk of which has been collected since 1951. This is justifiable not only by the high scientific value of most of these publications but also by the fact that, since 1854, Nepal's society has undergone considerably less change than India's society in the wake of urbanisation and industrialisation. In some cases the later edition of the MA (quoted as MA 2009) is also resorted to. It is hoped that this procedure, necessitated by the lack of synchronic documentary evidence, may turn out to have one advantage, namely to study the caste-related legislation in process or even as a process.

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[1] Legal documents, such as the various *lālmohor* and court decisions, have only been published to a limited extent, and with the exception of the Bhāṣā Waṁśāwali, the chronicles contain relatively few data on the caste society of their times.

It is not so much *the* theory of caste the present study deals with; rather, it focusses on *one* of the ethnotheories that a particular caste society has of itself. Consequently, mainly those works on India are discussed which present the data in their relevance to the material of the MA or in a comparative framework. A more detailed discussion of the theory of the so-called Sanskritisation and of such pioneering authors as Srinivas (1966, 1968), Sinha (1962), Orans (1965) and Kulke (1976) has also been deliberately relinquished.

The political and economical bases of the Nepalese society of the time of the MA can only be touched on. This does not mean that their importance is underestimated. Rather, our concentration on the mere cultural aspect will hopefully stimulate the discussion of the interdependence that exists between the material coercions and value-conditioned coercions in the "feasibility" of a caste hierarchy.

While contemporary empirical research can only seize on certain compartments of traditional societies, the MA has the great advantage of offering the representation of an entire traditional society—not as a utopia of the moralists and not as reflections of the learned, but as law for immediate application. Gaborieau (1966, 1972) and Macdonald (1970), who were the first to study the MA,[2] are right in claiming that for our understanding of the caste society of Nepal both empirical research and the study of legal texts are necessary. In view of the immense amount of writings on caste in India one is astonished by how little attention anthropologists have so far given to legal documents.

* * *

Since the reprint edition of the MA of 1854 is available in the market I refrain, for reasons of space, from an extensive quotation of its passages. If not otherwise indicated most of the translations are free and interpretative.

Nepali is transliterated according to the method of Turner (1965), Tibetan according to the Pelliot system, and the transcription of Tāmāṅg follows the principles laid down by myself. The antiquated orthography of the MA is fully rendered in quotations and in specific terms. Otherwise I follow the modern popular pronunciation of Nepali in accordance with Turner's system. The long variants of *i* and *u*, *ī* and *ū*, are only rendered in Hindi and Sanskrit words as well as in integral quotations from Nepali. (In the MA, *ī* and *ū* occur sporadically and their use is not consistent at all.) Differing from Turner, the letter "vakār" is always transliterated by *w* in Nepali words, whereas *v* is reserved for Hindi and Sanskrit. When quoting Nepali, the difference between *tadbhava* and semi-*tatsama* in Sanskrit loan words is neglected. I write *śudra*, *tirtha* and *warṇa* if quoting from Nepali, but *śūdra*, *tīrtha* and *varṇa* if quoting from Sanskrit.

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[2] Gaborieau (1966, 1972) devoted himself especially to those provisions of the MA of BS 2009 which deal with the position of the Muslims. Macdonald (1970) published an abundantly annotated translation of the chapter on the impure castes in the MA of BS 2009, and another translation (Macdonald 1968) of the passages concerning sorcery in the MA of BS 1910. Other scholars who made use of the material of the various editions of the MA are Regmi (1971, 1975, 1976) in his studies on traditional land tenure and Adhikari (1976) in a paper on criminal cases and their punishments in the 19th century. Two recent publications, namely Sharma (1977) on the problem of social mobility in the MA of 1854 and Bouillier (1978) on the position of the ascetics in the editions of the MA, reached me too late to be included in this study.

In the names of castes and ethnic groups I omit the plural suffix, except for Anglicised forms. Thus, I write "the Newār" (instead of "the Newārs") but "the Brahmins". The abbreviation "BS" indicates the Bikram Sambat *(Vikram Saṁvat)* era. As the exact conversion is a task for specialists, I follow the rule of thumb according to which one obtains the year of our era by deducting 57 from the number indicated in the Bikram Sambat calendar. The month, fortnight, solar and lunar day are neglected.

I

THE HISTORY OF THE MULUKI AIN

The first edition of the MA was prepared on the initiative of Prime Minister *(prāim miniṣṭar)* Jaṅg Bahādur Rāṇā and became operative on the 7th day of the month *puṣ*, in BS 1910 (January 6th, 1854). From among the later editions, one dating from BS 1922—1924 was not completed and never published; another one appeared in BS 1943. Under Prime Minister Juddha Śamśer Rāṇā a new edition was prepared in BS 1992 (1935). As to the caste hierarchy, this edition shows hardly any crucial difference to the MA of BS 1910 although some amendments, such as the abolition of slavery, etc, have been taken into consideration in it. The edition of BS 1992 remained effective until the end of the Rāṇā rule in 1951. An edition published in BS 2009 (1953) made allowance for those amendments which had been introduced before 1948; this edition was reprinted in BS 2012 (1955).[1]

In 1963, all these editions and versions were finally replaced by King Mahendra's new Muluki Ain (MA BS 2022) based on the country's first constitution. Undoubtedly, both Jaṅg Bahādur's (MA BS 1910) as well as King Mahendra's Muluki Ains each mark two turning points in the social history of Nepal. Jaṅg Bahādur's MA is a codification of traditional social conditions; its central concept is that of ascribed status. King Mahendra's MA, while not explicitly abolishing the caste hierarchy, does not approve of it any longer. It thus clears the way to a competitive society to which the concept of achieved status is fundamental. King Mahendra's MA was a reaction to a revolution which brought the Rāṇā rule and Nepal's isolation to an end. Jaṅg Bahādur's MA, by contrast, was the product of a dawning political consolidation after a period of wars and internal unrest between 1769 and 1846.

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[1] Cf., i.a., Kumar 1967: 84ff., 114ff., 119; Macdonald 1970: 139ff.; and Surya Bahādur Thāpā in his preface to the MA (pp. 1-7).—The original edition of the MA was simply called "Ain" (lit. 'law'), the adjective "Muluki" (lit. 'of the country') is more recent.—Adhikari (1976: 107) mentions a total of 13 amendments of the MA of BS 1910, including the one of BS 2012.

This MA of BS 1910 was promulgated only eight years after Jaṅg Bahādur's seizure of power and the establishing of the secular rule of Rāṇā prime ministers (1846-1951). As is well-known, the era following King Prithwi Nārāyaṇ Śāh's death in 1775 was marked by an overall political instability. The weakening of the power of the royal house, an economic crisis, frequent changes in key political positions and the lacking legal continuity were the result of an all too ambitious policy of conquest which diverted the country from its internal problems. Military expansion was too rapid to allow political expansion and the establishment of an administration to follow. As the newly-formed state was not founded on a homogeneous ethno-cultural basis it lacked the loyalty of its subjects. In the second decade of the 19th century, when the conquered areas in the West (Kumaun, Garhwal) and in the East (Sikkim) had to be renounced, Nepal was limited more or less to her present territory. It was to take thirty more years, however, until this development was finally taken into account ...

In order to protect the truncated state from British menace, a security screen against the outside world was as imperative as an internal consolidation of the country. It was necessary to re-legitimate the identity of Nepal and to motivate the solidarity of her citizens.

The MA was at the same time both product and implement of this strategy. It cemented a social order as a basis of a "centralised agrarian bureaucracy"[2] and strengthened the privileges of the state-bearing elites. The MA demarcated the country's society against foreign societies and cultures by defining it as a specifically Nepalese "national" caste hierarchy. Its homogeneous legislation (even in fields which apparently had nothing to do with caste) aimed at creating a homogeneously constituted society.

Last but not least, the reasons for the MA being conservative and authoritarian-minded are to be found in the fact that it was also a means for strengthening Rāṇā rule. The Rāṇā, as parvenus without active property and privileges, could legitimate their administrative measures only by using a language which was intelligible to everybody. Moreover, they had to interpret these measures in line with the traditional value-orientation of the population, as M.C. Regmi emphasises.[3] Even the deficiencies of the MA must partly be seen in connection with the purpose of keeping the dictatorial power of the Rāṇā clear of binding legal restrictions. The MA was not a constitution, nor did it contain regulations with regard to the authority of the king or the prime minister. It was more or less limited to the fields of administrative and personal law, without fully guaranteeing the autonomy of administration and law in relation to political leadership.[4] As we shall see, the MA also shows some deficiencies in the rules applying to the social system, and the question arises for what reasons such gaps have not been closed.

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[2] Regmi 1975: 106f.

[3] Regmi 1975: 104f.

[4] Regmi 1975: 110-111.

The claim of the MA to be a homogeneous legislation valid for the whole state's territory could not be fully satisfied. Wherever the State was represented by regional institutions the criminal law of the MA prevailed. As to civil law, it was the same with just one difference. Various groups of the population were openly or tacitly granted a certain degree of autonomy. Local traditions regulating marriage, inheritance, etc, were often tolerated as a kind of customary law, and jurisdiction was the concern of ad-hoc councils composed of village notables. Just as in our day, local arbitration committees even managed to evade the written law or interpreted it in their favour. Problems of communication and fear of corrupt officials often prevented the parties from bringing their case before local courts.

Offences connected with caste were probably penalised more or less according to the regulations laid down by the MA, particularly in those areas where the higher Hindu castes predominated. After all, the caste hierarchy of the MA was a system conceived by, and for the benefit of, these higher castes, and its protection was in their own interest. This does not mean, however, that the hierarchical order of castes presented by the MA always succeeded in enforcing full agreement among them.

Matters were different in remote areas which had not been opened up by public administration, especially in the northern high mountains. Here the caste hierarchy of the MA remained a projection "from above", a social order little known and even less accepted by the local people.[5]

The texts that might have served as sources for the MA have not yet been analysed. The MA only sporadically refers to the classical Indian legal works, the *dharmaśāstra*. When it does so it gives no further details. As to its character and claim, the MA is certainly related to the Arthaśāstra of Kauṭilya. Contrary to the *smṛti*, the Arthaśāstra, too, hardly contains religious or moral precepts, but is, as Kangle[6] emphasises, a systematic legal code giving detailed prescriptions with regard to public, criminal and civil law as well as to social life in general. Nevertheless, the Arthaśāstra seems to refer to a particular, historically and geographically discernible society to a much lesser extent than the MA.[7]

The influence of the Mughal administration, and the Āin-i-Akbarī in particular, upon Nepal has not yet received the attention it deserves. The part played by coeval India in the materialisation of the MA is also unknown. The Vīr Vinod of Śyāmaldās mentions that some men had come from Nepal to Rajasthan to inquire about the Rajputs' customs. According to Riccardi,[8] however, this contact was only established after Jaṅg Bahādur's death. Finally, one wonders to what extent British legislation in India might have influenced the concept of the MA as a whole. Was it, for instance, inspired by the so-called Punjab school with its paternalistic orientation?[9] Kumar[10] calls our attention to the fact that Jaṅg Bahādur had ordered the drawing up of the MA shortly after returning from his state visit to Britain in 1850.

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[5] Cf. below pp. 122ff.

[6] Kangle 1965: 225-240.

[7] At least Kangle (1965: 267f.) denies that the Arthaśāstra reflects the conditions of a certain epoch under Maurya rule, as has been surmised by others.

[8] Riccardi 1975: 200.

A Nepalese predecessor to the MA was certainly the code *(sthiti)* of the Newār king Jayasthiti Malla, which also laid down a caste hierarchy. Here it may suffice to note that the social context Jayasthiti Malla's code relates to is some 400 years older than that of the MA and limited to the Valley of Kāṭhmāṇḍu.[11]

Historical research is complicated by the fact that records of deliberations and substantiations by the editorial council are passed over by the MA. It is, however, a positive fact that the authors of the MA reverted to a great extent to customary law and the previous legislation, especially that of Bhimsen Thāpā's times (until 1837). Thus, the MA contains both a) codified law in the sense of a reinforcement of something already known and practised, and b) amendments changing what had been hitherto practised or at least correcting its application.

The contents of the Muluki Ain

The present study is based on the extended reprint edition of the MA which was published in BS 2022 (1965) with a preface by Surya Bahādur Thāpā, then Minister of Justice. It contains the aforementioned amendments of the years BS 1922-1924, which had been hitherto unpublished, a facsimile of the hand-written preamble to the original edition and some pre-MA legal texts in the annex.[12]

The first twenty chapters deal with land tenure, especially with the relation between tenant and landowner; they are followed by several chapters on the law of inheritance and adoption. The subsequent chapters contain the first information on the castes. These references are either interspersed in the text or given in connexion with the paragraphs concerning police regulations and adjective law, assault, battery, etc. Some castes or caste-groups are named in an order corresponding to their ranking in the hierarchy. A further 25 chapters are consecrated to subjects such as murder, the killing of a cow, arson, witchcraft, house-building, street-cleaning, manslaughter by setting traps against game infestation, etc. This is followed by six chapters on the legal status of slaves and bondsmen.

Only from chapter no. 87 onwards does the MA deal thoroughly with purity rules and inter-caste relations. It settles questions referring to the acceptance of food and water, the drinking of alcohol and the sharing of the hookah. Chapter 89 prescribes who is allowed to give absolution in cases of caste offences; here the measure of punishment (degradation, imprisonment, fine) is laid down as well as the kind of expiation the offender has to expect.

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[9] Cf. Stokes 1959: 235-322.

[10] Kumar 1967: 91, 117f.

[11] Cf. below pp. 175ff.

[12] Unfortunately, I was unable to use the original edition, which is now unaccessible to the public. My impression is that the enlarged reprint edition used in the present study was very thoroughly prepared by competent officials of the Ministry of Law and Justice.

Chapter 90 deals with the violation of commensality rules in general, chapter 91 with the right to wear the holy cord *(janai)* and chapter 92 with cases of minors violating the rules of commensality and consexuality. In chapter 93 (on legal aid to the poor) hardly any indications relevant to caste are to be found. The following four chapters are, yet again, substantial to our study. They settle the custom of suttee *(sati)*, the observances connected with death and childbirth and the measures to be taken against the transmission of the impurity caused by these events.

The remaining 66 chapters (nos. 98-163) occupy nearly 250 pages of the total 690 of the MA. They deal with sexual relations, both intra-caste and inter-caste, such as marriage, intermarriage (between persons of different caste affiliation), divorce, incest, pre- and extramarital intercourse, sodomy, rape, etc. It is determined to what extent the caste status of the persons involved is affected. One of these chapters is of particular interest as it settles with scrupulous exactitude the hierarchical ranking of impure and untouchable castes.

Much is also explained by a list annexed to the preamble to the original edition: it gives the names of 219 signers who belonged to the "Court Council" *(bhārādāri kausal)* which, as a legislative body, drew up the MA. The caste affiliation of most of these persons can be identified by their family names. As anticipated, the overwhelming majority of the council members came from the higher Hindu castes. At the top of the list we find the name of Jaṅg Bahādur Rāṇā qua Prime Minister. He is followed by some 30 dignitaries belonging to the Rāṇā family. It is significant, however, that the Śāh representatives, i. e. the members of the royal clan of the Ṭhakuri caste, number only four. The Brahmins, represented by 30 members, also have a relatively modest share. Numerically, the members of the Chetri caste are clearly predominant, as can be deduced from names such as Thāpā, Basnet, Adhikāri, Khaṛgā, Kārki, etc. Together with the Rāṇā, who also belong to this caste, the Chetri signers total over 100. The various ethnic groups are represented only by a few names. Among the signers are about eight Newār, about three Guruṅg, about four Magar; another 4-5 might be Tāmāṅg or of other ethnic groups.[13]

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[13] Cf. also Gaige (1975: 166) with conclusions partly differing from mine.

II

THE PEOPLES OF NEPAL: A SUMMARY

Ethnic diversity versus caste hierarchy

It stands to reason that a socio-cultural typology of the peoples of Nepal is much more difficult than their linguistic classification. Diagram no. 1 remains, therefore, largely schematic:

Sections I and III comprise speakers of Sino-Tibetan languages. Groups being Lamaists or followers of the Bonpo religion and speaking a dialect closely related to High Tibetan are called here "Tibetanids" (I). In their material culture, too, these groups are not essentially different from the inhabitants of Tibet.[1] The term "Tibetanoids" (III 1) refers to those groups whose languages show a rather remote relationship to dialects spoken in Tibet and who have been only partially influenced by the Tibetan high culture, predominantly through Lamaism.[2]

All the groups mentioned in section III 1-4 have been acculturated to varying degrees by the Parbatiya castes. This fact manifests itself, among other things, in their agrarian techniques, their dress, as well as in the partial "Hinduisation" of their pantheon. Among several of these groups a linguistic assimilation by Nepali is also to be observed. The impact of these acculturation processes is illustrated by the Cepāṅg, Kusuṇḍā and Rāji, who (except for the Rāute belonging to the Rāji) have proceeded from hunting and gathering to a sedentary life.[3]

The Newār (III B) of the Kāṭhmāṇḍu Valley represent a particular case. Contrary to the other groups in section III A, they have their own intra-ethnic caste hierarchy ranking from Brahmins down to Untouchables and are the heirs of a centuries-old high culture shaped by Buddhism and Hinduism.

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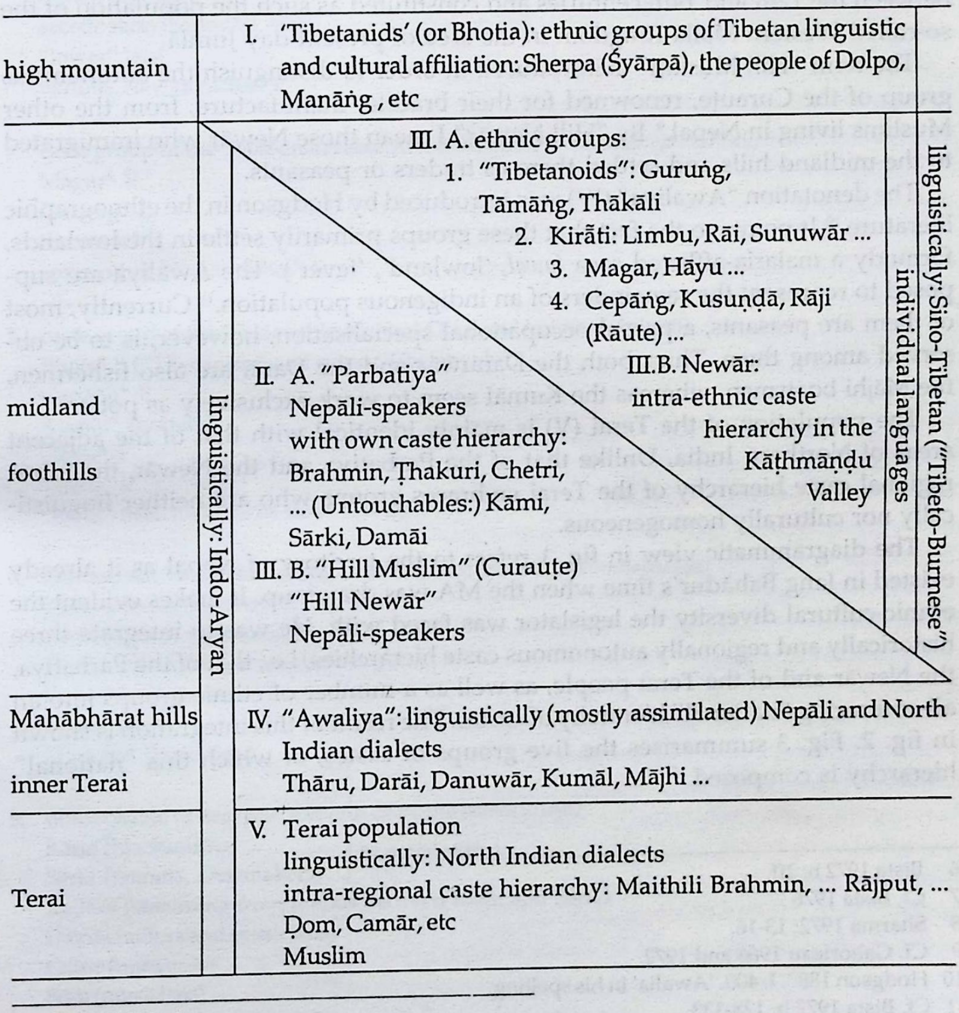
[1] Cf. Jest 1975: 33-39.

[2] Goldstein 1975: 68f. employs the term "Tibetanoid" for groups referred to here as "Tibetanid".

[3] Cf. Reinhard 1968 and 1974.

The "Parbatiya"(<*parwat*, 'mountains'), too, have their own caste hierarchy. They constitute the dominant proportion of the population, numerically as well as culturally and politically. Nowadays, more than one half of the total population of Nepal are Parbatiya.[4] The Parbatiya Brahmins are regarded as Nepal's highest ranking Brahmins; from the Ṭhakuri caste originates the present royal dynasty; and the Chetri caste supplies a considerable part of the higher officials and army officers. As is well-known, the foundation of the modern State of Nepal, with the

Fig. 1. The peoples of Nepal (schematic view)[5]


high mountain
I. 'Tibetanids' (or Bhotia): ethnic groups of Tibetan linguistic and cultural affiliation: Sherpa (Śyārpā), the people of Dolpo, Manāṅg , etc
III. A. ethnic groups:
1. "Tibetanoids": Guruṅg, Tāmāṅg, Thākāli
2. Kirāti: Limbu, Rāi, Sunuwār ...
3. Magar, Hāyu ...
4. Cepāṅg, Kusuṇḍā, Rāji (Rāute) ...
III.B. Newār: intra-ethnic caste hierarchy in the Kāṭhmāṇḍu Valley
linguistically: Sino-Tibetan ("Tibeto-Burmese")
individual languages
midland
foothills
linguistically: Indo-Aryan
II. A. "Parbatiya" Nepāli-speakers with own caste hierarchy: Brahmin, Ṭhakuri, Chetri, ... (Untouchables:) Kāmi, Sārki, Damāi
III. B. "Hill Muslim" (Curauṭe) "Hill Newār" Nepāli-speakers
Mahābhārat hills
inner Terai
IV. "Awaliya": linguistically (mostly assimilated) Nepāli and North Indian dialects
Thāru, Darāi, Danuwār, Kumāl, Mājhi ...
Terai
V. Terai population linguistically: North Indian dialects intra-regional caste hierarchy: Maithili Brahmin, ... Rājput, ... Ḍom, Camār, etc Muslim

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[4] Bista 1972 b: 1.

[5] Adapted from Frank 1973: 38 with some modifications.

conquest of the Kāṭhmāṇḍu Valley accomplished in 1769, was the work of these higher Parbatiya castes. It is directly due to this fact that Parbatiya settlements nowadays extend over the whole midlands of Nepal.

In spite of their linguistic homogeneity, the Parbatiya are of ethnically heterogeneous origin. Presumably, the Brahmins and the Ṭhakuri immigrated from Northern India during the second millenium AD, whereas the Chetri might be descended from the old-established Khas or from intermarriages between Brahmin immigrants and Khas women.[6] The Khas are regarded as a group who separated themselves from the main stream of Indo-Aryan immigrants to India and penetrated into Kumaun, Garhwal and Western Nepal in the second millennium BC.[7] Sharma[8] suggests that the caste hierarchy of the Parbatiya was already fully developed between the 12th and 14th centuries and constituted as such the population of the so-called Western Malla Kingdom in the area of present-day Jumlā.

The term "Hill Muslim" is introduced in order to distinguish the autonomous group of the Curauṭe, renowned for their bracelet manufacture, from the other Muslims living in Nepal.[9] By "Hill Newār" I mean those Newār who immigrated to the midland hills and settled there as traders or peasants.

The denotation "Awaliya" (IV) was introduced by Hodgson in the ethnographic literature.[10] It points to the fact that these groups primarily settle in the lowlands, formerly a malaria-afflicted area (*awal*, 'lowland', 'fever'). The Awaliya are supposed to represent the remainders of an indigenous population.[11] Currently, most of them are peasants; a partial occupational specialisation, however, is to be observed among them. Thus, both the Danuwār and the Darāi are also fishermen, the Mājhi boatsmen, whereas the Kumāl seem to work exclusively as potters.

The population of the Terai (V) is mainly identical with that of the adjacent areas of Northern India. Unlike that of the Parbatiya and the Newār, the intra-regional caste hierarchy of the Terai embraces groups who are neither linguistically nor culturally homogeneous.

The diagrammatic view in fig. 1 refers to the territory of Nepal as it already existed in Jaṅg Bahādur's time when the MA was drawn up. It makes evident the ethnic-cultural diversity the legislator was faced with. He was to integrate three historically and regionally autonomous caste hierarchies, i.e., that of the Parbatiya, the Newār and of the Terai people, as well as a number of ethnic groups into an all-embracing "national" hierarchy of castes. The result of this integration is shown in fig. 2. Fig. 3 summarises the five groups of castes, of which this "national" hierarchy is composed.[12]

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[6] Bista 1972 b: 2ff.

[7] Cf. Bista 1976.

[8] Sharma 1972: 13-16.

[9] Cf. Gaborieau 1966 and 1972.

[10] Hodgson 1880, I: 400. 'Awalia' in his spelling.

[11] Cf. Bista 1972 b: 128-133.

[12] Cf. below pp. 79ff.

Fig. 2. The caste hierarchy of the MA

* = the position (status) of the caste within the caste group is not precisely determined
E = ethnic group

1. caste group of the "Wearers of the holy cord" *(tāgādhāri)*
   Upādhyaya Brāhmaṇ
   Rajput (Ṭhakuri) ("warrior")
   Jaisi Brāhmaṇ
   Chetri (Kṣatri) ("warrior")
   Dew Bhāju (Newār Brahmins) E
   Indian Brahmin
   ascetic sects (Saṃnyāsi, etc)
   "lower" Jaisi
   various Newār castes* E

   - - - - -

2. caste group of the 'Non-enslavable Alcohol-Drinkers' *(namāsinyā matwāli)*
   Magar* E
   Guruṅg* E
   Sunuwār* E
   some other Newār castes* E

   - - - - -

3. caste group of the 'Enslavable Alcohol-Drinkers' *(māsinyā matwāli)*
   Bhote* E ("Tibetanids" and some "Tibetanoids")
   Cepāṅg* E
   Kumāl* (potters)
   Hāyu* E
   Thāru* E
   Gharti* (descendants of freed slaves)

   - - - - -

4. impure, but 'touchable' castes *(pāni nacalnyā choi chiṭo hālnunaparnyā)*
   Kasāi (Newār butchers) E
   Kusle (Newār musicians) E
   Hindu Dhobi (Newār washermen) E
   Kulu (Newār tanners) E
   Musulmān*
   Mleccha* (European)

   - - - - -

5. untouchable castes *(pāni nacalnyā choi chiṭo hālnuparnyā)*
   Kāmi (blacksmiths)
   Sārki (tanners, shoemakers) } of equal status
   Kaḍārā (stemming from unions between Kāmi and Sārki)
   Damāi (tailors and musicians)
   Gāine (minstrels)
   Bādi (musicians)
   Poṛe (Newār skinners and fishermen) E
   Cyāme (Newār scavengers) E

Fig 3. The caste groups of the MA

1. "Wearers of the holy cord" (*tāgādhāri*) 2. "Non-enslavable Alcohol-Drinkers" (*namāsinyā matwāli*) 3. "Enslavable Alcohol-Drinkers" (*māsinyā matwāli*)	caste category I: pure castes (*cokho jāt*) or "water-acceptable castes" (*pāni calnyā jāt*)
4. impure, but touchable castes (*pāni nacalnyā choi chiṭo hālnunaparnyā*) 5. impure and untouchable castes (*pāni nacalnyā choi chiṭo hālnuparnyā*)	caste category II: impure castes or "water-unacceptable castes" (*pāni nacalnyā jāt*)

a) The castes of category I may not accept water from the castes of category II, hence the latter are labelled "water-unacceptable".
b) "Wearers of the holy cord" (henceforth "Cord-wearers") are the so-called "twice-born" castes.
c) "Enslavable" are castes whose members, in case of certain offences, can be punished by enslavement. Impure castes (4 and 5) are also enslavable, although not explicitly so termed. (For further comments cf. pp. 94ff.)

The term "ethnic group"

Bearing in mind that the Parbatiya represent the dominant group of the population, the remaining groups (as shown in fig. 1) must be regarded as minorities. Again, one part of these minorities consists of ethnic groups. The denotation "ethnic group" has become well-established in anthropological writings on Nepal, although its substance has never been defined properly. Some authors use it as an antonym of "caste" or "caste society", approximately in the same sense as the term "tribal" is employed with reference to India.[13] It must be emphasised that the terminology of the MA does not distinguish between caste and ethnic group (tribe): the term *jāt* is used for both.

With regard to the Indian context, numerous attempts at a typology have been made. Here it may suffice to mention Bailey and Sinha.[14] Both authors deny the possibility of sharply distinguishing between caste and tribe; rather they see a wide continuum. According to Bailey and Sinha, the features characterising an ideal-typical tribal society are, among others: a) cultural autonomy without or with only slight ties to the "great tradition" of the Indian high culture; b) territorial isolation and a closed habitat; c) no or only sporadic interaction and hence no organic solidarity with other groups; d) no internal division of labour and no social stratification; and e) a direct access to the resources and means of production.

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[13] Further definitions are given in Gould and Kolb 1964: 243f., 432f.

[14] Bailey 1961; Bailey 1960: 263-266; Sinha 1965.

These criteria can only to a limited extent be applied to the conditions prevailing in Nepal. There the demographic intermingling has proceeded so far as to make criterion (b) invalid—if we disregard some of the "Tibetanids". Cultural autonomy (a) is another criterion which can almost be ignored as most of the ethnic groups have been exposed to high cultural influences for centuries. These influences originated from Tibet, India, the Kāṭhmāṇḍu Valley and from various centres of power in Western Nepal (Western Malla Kingdom, Gorkhā, etc). Only the Kirāti and the former hunters and gatherers (Cepāṅg, Rāji and Kusuṇḍā) were, until recently, able to preserve a certain degree of cultural autonomy. Finally, the application of criteria (d) and (e) is problematic, since the "Tibetanids" exhibit a social stratification and most of the ethnic groups avail themselves of the manual services of specific castes.[15]

In the following I shall use the denotation "ethnic group" for those minorities who have a subjective ethnic identity. That is to say, they are conscious of a solidarity due to a (mostly mythical) common ancestry and of sharing specific linguistic and cultural phenomena. In the main, this identity is expressed by an ethnonym, often "covering" a certain local or regional range of dialectal and/or cultural features. According to this working definition, the Newār with their centuries-old caste hierarchy are deemed an ethnic group just as are those groups who have come into the orbit of caste societies during the last two or three centuries. In substance, this identity is relational, that is, it is the outcome of an interplay between self-assessment and outside-assessment. The relevance of this interplay will be discussed in the subsequent chapters.[16]

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15 Cf., i.a., Höfer 1972 and 1976 on Tāmāṅg-Kāmi interrelations.

16 Cf. below pp. 124ff. The problem of relational identity is discussed in Barth 1969; Horowitz 1975 and Lehman 1967, to mention a few references.

III

PURE AND IMPURE

> "... nous ne prétendons pas que l' opposition pur/impur 'fonde' la société autrement qu'au sens intellectuel du terme; ... nous ne prétendons pas que l'opposition soit la *cause* de toutes les distinctions de caste, nous prétendons qu'elle en est la *forme* ..."
>
> (Dumont 1966: 66, 67)

What is the ethnotheoretical conception on which the caste hierarchy of the MA is based?

It is Louis Dumont to whom we owe the first extensive attempt to conceive the caste system as a system of ideas and values of the Pan-Indian civilisation. For Dumont, the dichotomy pure/impure is not the cause but the form of the hierarchy. This dichotomy conditions the hierarchy "intellectually" since it is by implicit reference to this dichotomy that the caste society appears to be consistent and rational to its bearers. Caste hierarchy is a systemic universe of relations definable by means of the concepts of structural linguistics. This universe is the whole defining the parts, whereas the parts only exist in their relation to the whole. The Brahmins' purity is only relational, that is, it only exists in relation to the Untouchables' impurity.

Between the two poles, Brahmins and Untouchables, there is a practically unlimited number of status positions (castes) possible. The status gradation within the hierarchy results from a series of oppositions, from a diversity of criteria, all of which can be attributed to the fundamental dichotomy pure/impure.

The cultural attributes of a caste are regarded by Dumont as absolute status criteria. Whether a caste is vegetarian or not, whether it tolerates widow remarriage or not, whether its members, through their occupation, come into contact with filth or not—each of the answers to these questions gives such an absolute criterion. Dumont calls the specific interrelations between one caste and the other castes relative status criteria. Facts such as what kind of food is accepted from which caste(s) and what kind of services are rendered to which caste(s), are decisive for relative status criteria. A caste's status position is defined by a particular combination of different criteria, absolute and relative. Every single criterion "C" a caste X shares with castes Y and Z, "solidarises" all three castes. At the same time, it places X, Y and Z in contrast to all other castes which do not exhibit criterion "C". Different individual criteria result in other combinations. Every caste is thus characterised by various specific criteria, the combination of which determines their degree of purity or, in other words, their status position within the hierarchy.[1]

Naturally, the MA does not contain such a systematically presented ethnotheoretical rationale. Instead, we have to rely on data gained from implications in scattered details and their contexts.

The prescriptions laid down by the MA seem to imply that the status[2] of a person is linked with the specific "amount" of purity this person possesses. This purity can be temporarily or definitely lost through contact with "less pure" persons or with certain substances (bodily excretions, etc) or, again, by certain acts regarded as sins (murder, incest, etc). As a result, the person concerned undergoes a corresponding quantitative degradation in status: his caste membership is lost or, at least, subject to restrictions. This leads us to the hypothesis that every caste possesses a specific amount of collective purity.[3]

Vocabulary

There are at least four Nepali terms to be translated as "pure":

— *saphā* = 'pure' in the physical sense (free from dirt);

— *pabitra* = 'ritually pure' in the sense of 'holy' or 'consecrated' (offerings to gods must be deposited in a cleaned place; a sanctuary ceases to be *pabitra* if entered by a woman in her menses);

— *cokho* = 'ritually pure', 'free from ritually relevant defilement' (as *pabitra),* also 'fresh', f.i., *cokho pāni* = 'fresh water', as an antonym of *bāsi* = 'stale';

— *śuddha (suddha)* = 'ritually pure' *(as cokho)*, also 'limpid', 'clear', 'correct' (antonym: *aśuddha).*

For "ritually impure" the following terms are used by the MA:

— *juṭho* = a) as an adjective: used for leftovers of food which has come into contact with somebody else's saliva; and b) as a noun: used for the state of impurity which results from the death of a relative.

— *wiṭulo (biṭulo)* = as an adjective for the water which has come into contact with someone belonging to the impure castes of the category "Water-Unacceptable" (cf. fig. 3); in normal speech the leftovers of food are also sometimes called *biṭulo* (as *juṭho*).

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[1] Cf. Dumont 1966: 59-68 and 79-81.

[2] I am referring here to what has widely been called "ritual status" in the anthropological literature on India. Dumont (1966: 66) seems to prefer the adjective "religious", whereas I stick to "ritual", since the status-based interrelations between different castes mainly consist of formalised interactions.

[3] This is to be verified in the subsequent chapters, pp. 17-68.

- — *sutak* = as a noun is used for the state of impurity a) of a woman in confinement; and b) of the bereaved after the death of one of their relatives (*mṛtyuko sutak*, 'impurity of death').
- — *āsauc* = as a noun is used for the state of impurity resulting from a relative's death and thus an equivalent of *sutak* (b) and *juṭho* (b).

If something *juṭho/biṭulo* is accepted, the impurity is transferred to the receiver. An outsider who comes into contact with a person in a state of *sutak* or *āsauc* (by accepting certain kinds of food or substances from the latter) is defiled and put into a state of *sutak/āsauc* himself.[4]

juṭho, āsauc and *sutak* denote a temporary state of impurity principally independent of the caste of the person concerned. *biṭulo*, in turn, can mean both: a temporary-personal impurity as well as a permanent-collective one which relates to caste. From the multiple overlapping semantic fields it may be concluded, nevertheless, that these kinds of defilements/impurities are of identical nature:

	juṭho	*biṭulo*	*sutak*	*āsauc*
leftovers	x	x		
touched by impure caste		x		
death	x		x	x
childbirth			x	

This identity is also endorsed by the combinatory characteristics of the term *śuddha*, 'pure', as *śuddha* stands for everything which is not *juṭho/biṭulo* and for everybody who is not in a state of *āsauc/sutak*. Thus *śuddha* can denote both, temporary-personal as well as permanent-collective purity. Someone having purified himself adequately after a relative's death is called *śuddha*, just as the water which is not *biṭulo*. And what is more, the castes of the category "Water-Acceptable", i.e., the "pure" castes, are also termed *śuddha jāt* or, alternately, *cokho jāt*.[5]

It should be stressed that only the terms *śuddha* and *cokho* connote purity connected with caste status. While the "Water-Acceptable" castes are called *śuddha jāt* or *cokho jāt* there is no corresponding, antonymous adjective like *juṭho* or *biṭulo* for the inferior castes of the category "Water-Unacceptable". If the expression

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[4] *juṭho* < Sanskrit *juṣṭaḥ*, 'tasted', 'tried' (cf. Turner 1965: 220). A dish which has not been tasted by anyone but put aside for some time after cooking, can also become *juṭho*. In this sense *juṭho* is a synonym of *bāsi*, 'stale', and an antonym of *cokho*, 'fresh', 'freshly prepared'.—*biṭulo* is connected with the verb *biṭulyāunu*, 'to defile', as in the expression *mukh biṭulyāunu*, 'just to touch food with one's lips' (Turner 1965: 751). A dish already made *juṭho* by somebody may still be eaten by specific relatives. For instance, a married woman can (or even has to) take her husband's and children their parents' *juṭho*. Such *juṭho* observances vary according to caste. On Untouchables eating the *juṭho* leftovers of higher castes cf. pp. 71ff.

[5] Cf. MA p. 369 § 3; p. 371ff. § 12-14, 23, 25-26; p. 426f.; p. 429ff.; p. 607 § 16.

"impure castes" has been introduced in this study it is only for practical reasons. Yet the regulations of the MA make it manifest that we are here faced with an unmarked opposition and that the "Water-Unacceptable" castes are thus considered impure. For water touched by these castes is, according to the MA, *biṭulo* and somebody who has undergone a purification after having been in a defiling contact with these castes is called *śuddha*. A house which has been entered by members of these castes must also be purified by a ritual act, *cokhyāuni* (deriving from *cokho*).[6]

It is worth noting that *śuddha* or *cokho* on the one hand, and the unmarked opposition (impure castes) on the other, only denote the amount of purity of the two caste *categories*, but not the relative purity "owned" by individual castes. In one paragraph,[7] the MA uses the expression *āphu bhandā cokho jāt* that is 'a *jāt* purer than one's own', with reference to individual castes. Even though it thereby becomes evident that to each caste (and not only to each caste group) a different degree of purity is attributed, in most instances the MA prefers to describe the status differences between individual castes by resorting to spatial or quantitative categories, such as X *bhandā nic/sānu/ghaṭi/kam jāt* = 'lower/smaller/inferior/minor caste than X'. Likewise, we find X *bhandā upallo/ṭhulo/waṛhi (baṛhi)* = 'higher/bigger/more than X'.

Similarly, the regulations referring to the interrelations between individual castes also throw light on that gradation of purity. Judging from them, certain contacts between castes *within* the category "Water-Acceptable" are as defiling as contacts between castes of both categories, "Water-Acceptable" and "Water-Unacceptable". Thus the acceptance of cooked rice *(bhāt)* ensues defilement if offered by someone whose caste ranks lower than the receiver's. This defilement *(bor)*[8] comes about regardless of whether the offerer belongs to a pure or an impure caste category. The concomitants determine the consequences such a *bhāt* acceptance has: Either the receiver is degraded and integrated into the offerer's caste; hence it follows that the former has assumed the relative caste-specific impurity (reduced purity) of the latter. Or, the receiver is rehabilitated, and in this case he is explicitly declared *śuddha*. Such prohibitions on acceptance exist between individual castes of both categories. Therefore, in the case of a rehabilitation, someone belonging to the pure castes ("Water-Acceptable") can be declared *śuddha*, just as someone belonging to the impure castes ("Water-Unacceptable") f.i., an untouchable person.[9]

Thus we come to the preliminary conclusion that *śuddha* implies different degrees of purity, varying with caste affiliation (caste status). To become *śuddha* by rehabilitation means for a Brahmin that he remains a member of a category of castes, all of which call themselves *śuddha*, pure. For an untouchable offender, however, to become *śuddha* by rehabilitation only implies that he continues to be a member of a caste which is *not* termed *śuddha* by the MA.

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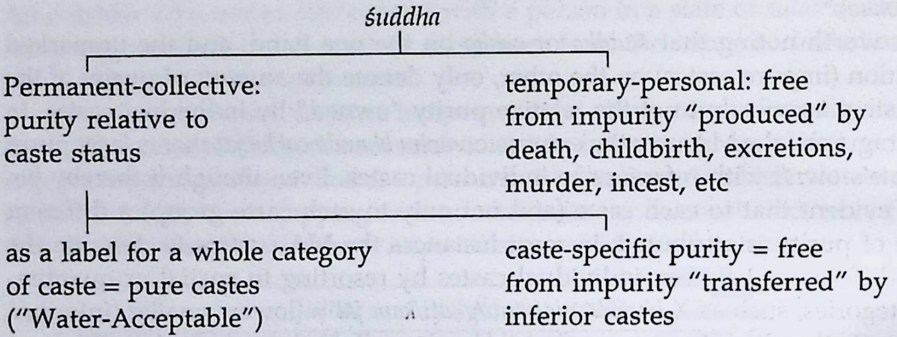
[6] MA p. 370 § 10; p. 371 § 14.

[7] MA p. 369 § 1.

[8] On *bor* cf. pp. 25f.

[9] Cf. among others MA p. 606f. § 14, 16; p. 669 § 3.

To sum up, *śuddha* can mean both a) to be free from the collective impurity of castes ranking lower than Ego, that is, free from "transferred" impurity, and b) free from personal-temporary impurity which exists regardless of contact with other castes, that is, free from an impurity "produced", say, by death, childbirth, bodily excretions or by sin/crime, such as murder or incest.[10]



śuddha

Permanent-collective:
purity relative to
caste status

temporary-personal: free
from impurity "produced" by
death, childbirth, excretions,
murder, incest, etc

as a label for a whole category
of caste = pure castes
("Water-Acceptable")

caste-specific purity = free
from impurity "transferred" by
inferior castes

The ties between the two types of impurity ("transferred" and "produced") will be discussed later. Suffice it to note here that both are to a certain extent convertible, irrespective of the taxonomy of the MA.

In the subsequent chapters on inter-caste relations, an extensive analysis of the relevant MA regulations is unavoidable. Their abundance and complexity not only testify to the MA's function of integrating ethnically diverse groups into a hierarchy of castes; they also throw some light on aspects which in anthropological writings on caste have often been dealt with all too undiscerningly. This is particularly true of the questions of untouchability, commensality and the interdependence between status and purity. In order to facilitate the reader's orientation, several passages have been presented in diagrams.

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[10] Orenstein's distinction between "relational pollution" (temporary pollution at the time of death and childbirth) and "act pollution" by some form of contact is another attempt at the analysis of the material as presented in the classical Indian law sources. Cf. Orenstein 1968: 116ff.

IV

COMMENSALITY AND CONTACT

> "Food is the filth of men, everything is centered in food, the evil deeds of men resort to their food. Whoever eats the food of another partakes of that man's sin." (Gṛhastharatnākara, quoted by Kane 1974: 758)

Edible and inedible

Food is divided into two categories: *abhakṣ*, 'inedible', and *bhakṣ*, 'edible'. Dog-meat, f.i., is *abhakṣ* for all castes since no one in Nepal would eat it, under normal circumstances at least. Rice and water are *bhakṣ* as all castes are allowed to partake of them. Among the *bhakṣ* kinds of food another principal distinction is drawn between those permitted to all castes, on the one hand, and those permitted to certain castes only, on the other. Pork and alcohol are *bhakṣ* for, say, a Magar (member of an alcohol-drinking caste) and an Untouchable, but prohibited for a Brahmin and any other "Cord-Wearer". If the latter partake of them they lose their caste status. The legislator thus distinguishes between *nakhānyā abhakṣ* and *jāt jānyā bhakṣ*, that is, 'inedible, not to be eaten [by anybody]' and 'edible entailing [with respect to some castes] the deprivation of caste status', respectively.[1]

Why does a violation of these diet rules lead to deprivation of caste status? Proceeding from the assertion that every status position within the hierarchy is conditioned by a specific amount of purity, there can be only one answer to this question: Certain kinds of food are bearers of impurity. The reason why pork and dog-meat are considered polluting is, partly at least, to be found in the way these animals live.[2] As to alcohol, we have to content ourselves with the fact that this is a caste-specific substance that may be taken by castes in the medium and lower ranks of the hierarchy, possessing a "smaller" amount of purity than the highest ranking ones.[3]

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[1] Cf., f.i., MA p. 372f., p. 407ff.—The meaning of this distinction is also elucidated by the penalties which come into force in the case of incest: If the offender is an Upādhyaya or Jaisi Brahmin, he should be degraded by being compelled to eat pork and drink alcohol. If he is of the caste group "Non-enslavable Alcohol-Drinker" (as the Magar in our example), he will be fed dog-meat (MA pp. 527-529, p. 543ff.).

While pork, dog-meat and alcohol are sui generis, although at varying degrees, polluting, there is another category of substances which only occasionally pollute, such as water *(pāni)* and some kinds of cooked food, *bhāt* (boiled rice, etc) in particular.[4] In principle, the latter are allowed for all castes *(bhakṣ)*. If they pollute, it is not due to their specific inherent quality; it is rather that they have been touched, prepared or offered by someone "more impure" than the receiver. The offerer's impurity can be a temporary one caused by, say, a case of death or birth among his relatives. Or this impurity is a permanent one, that is, the offerer's caste status is lower than that of the receiver. In some other cases, he may belong to the same caste as the receiver, but in consequence of a slight decline of status he is excluded from commensality with the latter.[4a] Thus the offerer can transfer his inherent impurity to the receiver and in this way reduce the latter's purity. To transfer impurity through food is called *bornu* in the MA.

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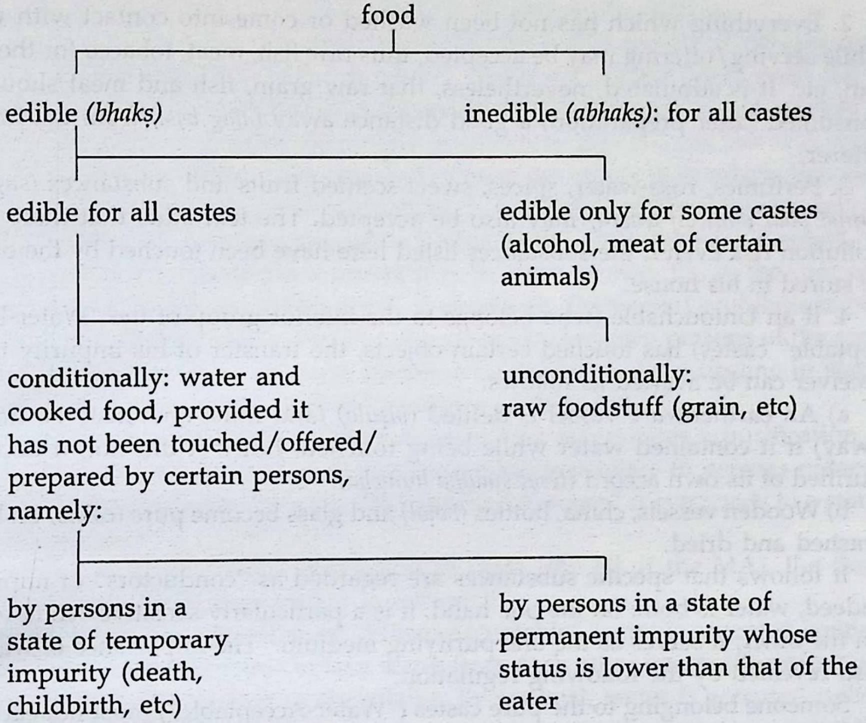
[2] By pork the meat of the local black species of pig, *suṅgur*, is meant. Pigs and dogs are chiefly fed on garbage and leftovers of food, the latter being regarded as *juṭho* (cf. pp. 13f.). Except for few instances, as in the high mountain regions, dogs are kept, indeed, also for the purpose of removing human faeces.—Contrary to many Brahmins in India, Nepalese Brahmins are not vegetarians. They eat game and goat (the latter also as a sacrificial animal), but they avoid buffalo, chicken, eggs and duck (cf. MA p. 369ff. § 4, 8, 12, 15, 30, p. 412 § 23). With reference to the strictly vegetarian Havik Brahmins in South India, Harper (1964: 155f.) writes: ".. meats are graded as to their relative amount of pollution (starting with the least defiling: eggs, fish, chicken, goat and sheep, wild pork, domestic pork and finally water buffalo and beef) ...". On the meat of wild animals in India cf. also Eichinger Ferro-Luzzi 1975.

[3] In the classic Indian sources, since the time of the Vedas, alcohol drinking had been regarded as one of the greatest sins and as unanimously condemned as the murdering of a Brahmin (Kane 1953: 8-22).

[4] The extensive meaning of *bhāt* is 'grain boiled or steamed in water'. Generally, the term *bhāt* is used in the sense of 'boiled rice' only, whereas the pap or bran made of shredded millet, maize and wheat is specified accordingly and called *kodoko bhāt*, *makaiko bhāt*, *gahunko bhāt*, respectively. As the MA fails to give a precise definition of the term, I shall refrain from translating it. Cf. also Macdonald 1970: 143f.; Turner 1965: 474; Śarmā 2019: 786. Cf. also pp. 21f.

[4a] Cf. pp. 39ff., 86. Strictly speaking, temporary impurity also implies such a decline in status.


food
edible (*bhakṣ*)
inedible (*abhakṣ*): for all castes
edible for all castes
edible only for some castes (alcohol, meat of certain animals)
conditionally: water and cooked food, provided it has not been touched/offered/ prepared by certain persons, namely:
unconditionally: raw foodstuff (grain, etc)
by persons in a state of temporary impurity (death, childbirth, etc)
by persons in a state of permanent impurity whose status is lower than that of the eater

What may pure castes accept from impure castes?

Of particular interest are the clauses of the MA[5] which determine which substances can be accepted by the castes of the category "Water-Acceptable" from those of the impure category "Water-Unacceptable" without the risk of polluting themselves:

1. Raw grain, rice included, may be accepted if it is husked or ground. It must not be accepted, however, if it has been boiled *(usinyāko)* in water or roasted *(bhuṭyāko)*.[6]

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[5] MA p. 369ff.

[6] *bhuṭyāko* < *bhuṭeko* (in modern orthography) means 'roasted' with or without fat (Śarmā 2019: 794).—This does not mean that roasted *(bhuṭeko)* and boiled *(usinneko)* food always transfer the same amount of impurity. In fact, the prohibition just mentioned refers only to the acceptance of food offered by members of the impure castes ("Water-Unacceptable"). Matters are quite different in the case of the pure castes ("Water-Acceptable") because, although caste X will not accept boiled *bhāt* from a lower-ranking caste Y, it will still accept roasted food. Here we are faced with a distinction well-known from Northern India, namely that between *kaccā* food (boiled rice/wheat *capāti*) and *pakkā* food (fried in fat, parched without the medium water). As a rule, *pakkā* can be taken from lower castes, although not from the lowest ones. Cf., i.a., Mandelbaum 1970, I: 199; Dumont 1966: 181ff.; Harper 1964: 156; Marriott 1959; Mayer 1960: 33-47ff.

2. Everything which has not been washed or come into contact with water while serving/offering may be accepted, thus raw fish, meat, tobacco for the hookah, etc. It is stipulated, nevertheless, that raw grain, fish and meat should be consumed (after preparation) a good distance away *(alag basi)* from the impure offerer.

3. Perfumes, rose-water, spices, sweet-scented fruits and substances *(sugandh āunyā phal phul cij wastu)* may also be accepted. The text adds that there is no pollution risk even if the substances listed here have been touched by the offerer or stored in his house.

4. If an Untouchable (who belongs to the inferior group of the "Water-Unacceptable" castes) has touched certain objects, the transfer of his impurity to the receiver can be averted as follows:

a) An earthenware vessel is defiled *(biṭulo)* (and must obviously be thrown away) if it contained water while being touched. But if it did not, it becomes purified of its own accord *(tesai śuddha huṁcha)*.

b) Wooden vessels, china, bottles *(boṭal)* and glass become pure *(cokho)* on being washed and dried.

It follows that specific substances are regarded as "conductors" of impurity. Indeed, water is both: on the one hand, it is a particularly sensitive "conductor", on the other, it serves as the one purifying medium.[7] The importance of water is also revealed by the following regulation:[8]

Someone belonging to the pure castes ("Water-Acceptable") must not eat meat which had been touched by an Untouchable before being prepared and which has then been in contact with water while being prepared. The water, which (accidentally?) came into contact with the meat, seems to "conduct" impurity—for the meat is obviously not defiled by the bodily contact itself, but rather by the presence of water. (We have already learnt that raw meat may be accepted even from an Untouchable.)

The acceptance of water and *bhāt*

The MA abounds with both terms, *pāni* (water) *calnyā* and *bhāt calnyā (calne)*.[9] Both are used adjectively: for Ego those persons are *calne* from whom Ego is allowed to accept water and/or *bhāt; nacalne*, on the other hand, are those from whom Ego must not do so, as indicated by the negative prefix *na-*.

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[7] Cf. also Dumont 1966: 181ff.; Mandelbaum 1970, I: 198f.; for a detailed description of substances considered to "store" or to conduct impurity in a South Indian context cf. also Harper 1964: 172f.

[8] MA p. 274 § 25.

[9] *calnyā* or *calne* (in modern orthography) < *calnu*, 'to move' (intr.), 'to be customary', 'to be practised'. With regard to Northern India, Blunt (1969: 88) defines the meaning of "acceptance" more precisely in stressing that "it is the caste of the cook that matters, not the caste of the host". He also points out that "the vessel in which the water is contained affects the question [of from whom to accept water]. A high caste man will allow a low caste man to fill his *loṭā*

In principle, the following rules are applicable: 1. The groups of persons from whom Ego may take *bhāt*, on the one hand, and water, on the other, need not be identical. 2. *bhāt* can be accepted only unilaterally; water either unilaterally or reciprocally. That is, a) there are people from whom Ego accepts *bhāt* and water and who also accept them from Ego; and b) there are others from whom Ego only accepts without being allowed to give them. 3. A prohibition of acceptance may be effective either for a limited period or permanently. Only between persons belonging to the same caste can a prohibition be short-termed, f.i., in the case of a temporary defilement caused by death or childbirth. Permanent prohibitions prevail between different castes, and in some cases also between persons of the same caste; the latter instance concerns people who exhibit a slight decline in status compared to that of other "normal" members of their caste.[10]

As violation of the rules evokes pollution and necessitates a purification or degradation, it may be concluded that the prohibition refers to persons possessing a discrepant amount of purity. The "purity difference" corresponds to a status difference.

Transferred to the status dimension of caste (the *jāt* of the MA), the three aforesaid rules can be exemplified as follows:[11]

Within the pure caste category "Water-Acceptable" water is accepted reciprocally: All pure castes are free to take water from each other irrespective of who is higher-ranking, the receiver or the offerer. By contrast, water is accepted unilaterally a) between pure and impure castes, and b) among the impure castes of the category "Water-Unacceptable". In other words, no pure caste is allowed to accept water from an impure one, and no impure caste is allowed to accept water from another lower-ranking impure caste. Or in the MA's terminology, all pure *(cokho)* castes are *pāni calne* for each other and all impure castes are *pāni nacalne* for the pure castes as well as among themselves.

bhāt, however, is accepted strictly unilaterally, that is, only from someone who belongs either to Ego's caste or a caste higher than Ego's. Schematically represented:

(drinking vessel) for him, but he will not drink from the *loṭā* of that low caste man" (Blunt 1969: 98).—The MA does not elaborate on such details, but its wording suggests that the host is as important as the cook. The frequently used phrase *X jātkā hātko bhāt pāni khāi* lit. 'having eaten *bhāt*, water from the hand of caste X', proves that defilement may also stem from the one who offers or serves, cf., among others, MA 407ff.

[10] The MA does not sufficiently elaborate on the question of such slight status differences that may exist within one and the same caste. Cf. on this pp. 40, 85f., 120ff.

[11] For the following discussion cf. MA p. 407ff.

caste category	*caste group*	*direction of acceptance*		
		bhāt	*water*	
"Water-Acceptable" (pure castes)	"Cord-Wearers"	↓	↓	*bhāt* unilaterally
	"Non-enslavable Alcohol-Drinkers"	↓	↓ ↑	water reciprocally
	"Enslavable Alcohol-Drinkers"	↓	↓	
water-line				
"Water-Unacceptable" (impure castes)	"Water-Unacceptable but Touchable"	↓	↓	*bhāt* and water unilaterally
	"Water-Unacceptable Untouchable"	↓	↓	

To illustrate this, let us take the Upadhyaya Brahmin ("Cord-Wearer") and the Magar ("Non-enslavable Alcohol-Drinker") as representatives of the pure castes and the Untouchable as that of the impure castes. The Brahmin is free to accept water as well as *bhāt* from another Upādhyaya, whereas from the Magar he may accept only water but no *bhāt*, and from the Untouchable neither water nor *bhāt*. The Untouchable may accept both water and *bhāt* only from members of his own or any other higher-ranking caste.

Excursus: problems of interpretation

With regard to *bhāt* acceptance, there are numerous exceptions. One of them is that *bhāt*, to which some oil or clarified butter has been added, may in some cases be accepted even from castes ranking lower than Ego. Oil or butter are thus thought to "neutralise" the impurity of the person offering the *bhāt*.[12] The MA calls such a "neutralising" substance *cokhyān* (<*cokho*, 'pure'). Adding oil or butter is reminiscent of the Indian concept of *pakkā* food which, by means of fat, becomes less susceptible to impurity than the other type, *kaccā*, such as boiled rice, etc.[13]

What has so far been said suggests that impurity is mainly transferred through water, namely both drinking water and cooking water in which *bhāt* is prepared. This interpretation, however, does not prove to be applicable to all the regulations of the MA, as the subsequent examples illustrate:

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[12] As the ethnographic evidence proves, the rules of commensality are much more complicated in practice and vary according to caste and region. For an illustration cf. pp. 201f.

[13] Cf. footnote 6.

1. Pickled vegetables *(gūdruk)*, pickled radish *(sinki)*, pickled bamboo shoots *(tāmā)* as well as fresh fruits must not be eaten by anyone belonging to the pure castes ("Water-Acceptable") if these have previously been touched or cut open by a member of the impure castes ("Water-Unacceptable"). Strikingly enough, the violation of this rule ensues only a fine and not the deprivation of one's caste status *(jāt jādaina)*.[14] Here again water (sap, juice) seems to be the vehicle which transfers impurity.[15]

2. Rose-water, but not alcohol, may be accepted from a member of the impure castes.[16] Thus rose-water and alcohol (beer or liquor made from grain) are valued differently although they both contain water. Whereas rose-water is regarded as "neutral", alcohol retains the impurity of the person offering it. Let us stress that the point in case is not the inherent impurity of alcohol which makes it polluting under any circumstances for the "Cord-Wearer" castes; the MA explicitly refers to the "Alcohol-Drinker" castes of the category "Water-Acceptable". But now matters are further complicated by the provision according to which even "Cord-Wearers", such as the Jaisi Brahmin, the Rajput (Ṭhakuri) and Chetri, do not lose their caste status if they drink alcohol *(arak)* made from fruits and officinal herbs.[17] Apparently, the MA makes a difference between these "special" alcoholic drinks and "normal" alcohol made from grain, because the consumption of the latter entails degradation (cf. p. 17).

3. The MA determines that a "Cord-Wearer" does not lose his caste status if he accepts leaf-vegetables *(sāgpāt)* from a member of any of the pure castes whose status is lower than his, provided the dish has been fried *(bhuṭyā)* in a clay or metal vessel.[18] But if the same dish has been cooked by adding water, the "Cord-Wearer" in question is liable to a fine of Rs 10 and must apply for absolution *(patiyā)*. In both cases it is of no relevance whether or not the dish has been salted.[19] Obviously, unlike oil and butter, salt is not regarded as an ingredient which "neutralises" or "reduces" a possible defilement.

As we see, the acceptance of leaf-vegetables prepared in/with water is subject to limitations as strict as those concerning *bhāt* (boiled rice, etc, cf. pp. 19ff.): taking *bhāt* from anyone lower in caste status defiles the receiver. In both cases water seems to be a "conductor" of impurity, but only if it is used as cooking-water because, as already stressed, drinking-water may be accepted reciprocally by members of the pure castes. From the whole set of rules applying to *bhāt* and water we can thus conclude that cooking-water is more "conductive" than drinking-water.

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[14] MA p. 412 § 19.

[15] Any contact, not only an oral one, with an Untouchable defiles a higher-ranking person of the touchable castes. The Untouchables *(choichiṭo hālnuparnyā jāt)*, however, represent only one section within the impure caste category (cf. fig. 3), and the regulations as mentioned above clearly refer to that category as a whole.

[16] MA p. 369 § 2, p. 376 § 34.

[17] MA pp. 375-376 § 33.—Alcohol for normal consumption is made from grain and is either beer *(jāṛ)* or liquor *(raksi, arak)* made by distillation. On the different fruits utilised for distillation cf. also MA p. 375 § 30.

[18] MA p. 412 § 20.

[19] ibid.

4. Impurity can also be transferred without the medium water, even between the pure castes. This seems to be true of *dahi-ciurā*, a mixture of curdled milk and flattened rice. If an Upādhyaya Brahmin partakes of *dahi-ciurā* which has been kneaded by a (lower-ranking) Jaisi he is fined and held to apply for absolution *(patiyā)*.[20] In fact, the curdled milk contains water, but the MA fails to indicate whether the pollution comes about on account of that water. It is also to be noted that, unlike curdled milk, fresh milk may be accepted even from some impure castes. The Kasāi butchers, f.i., who occupy the highest status position among the impure castes, also sell milk to the higher castes.[21]

These few examples already demonstrate that the MA's conception of impurity and its transfer is not subject to a quasi-physical determinism.

Commensality and caste status

What are the consequences of the pollution transferred by accepting *bhāt* and/or water, and to what extent does the caste hierarchy become transparent in the light of the commensality rules?

In accordance with the above-mentioned rule 1 on p. 23, the paragraphs of the MA dealing with the rules of acceptance define exactly the group of persons who are regarded as polluted according to the specific situation.[22] For 'to defile by accepting *bhāt* or water' the verb *bornu (wornu)* is employed. The phrase *āphu mildālāi bhātmā ra arulāi pānimā worecha*, i.e., '(he/she) defiled his equals in *bhāt* and others in water', refers to a specific case: A member of the pure castes ("Water-Acceptable") was defiled by contact with impure castes ("Water-Unacceptable") and transferred, in turn, this defilement to other persons.[23] These persons can be of any of the pure castes, namely, a) of his own caste with whom he, the offender, is living in *bhāt* commensality, b) of a lower-ranking pure caste who accepts *bhāt* and water from him, and c) finally also of a higher-ranking pure caste who, according to the rule of reciprocity, accepts water from him.

For 'being commensal in *bhāt*' the MA is using the idioms *bhātmā āphu mildā* or *bhātmā sarowar* or *bhātmā milnu* (*milnu=sarowar/sarobar hunu*, 'to equal'). The term

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[20] MA p. 412 § 21.—Apparently this is another regulation meant to protect the Upādhyaya as the highest Brahmins from the impurity of other castes. In India, *dahi-ciurā* seems to be somewhat less susceptible to impurity and can thus be served on occasions when members of different castes come together (feasts, etc) (Dumont 1966: 183).

[21] MA p. 679 § 12.—Even the "orthoprax" Havik Brahmins in South India accept cow's milk from an Untouchable, provided it has not been diluted with water. Cow's milk is considered a substance which, once in a state of purity (= free from water), cannot be defiled (Harper 1964: 156).

[22] MA. p. 407ff., also p. 607 § 16, p. 629 § 1 on the use of the terms *śuddha*, *juṭho* with reference to the rules of acceptance.

[23] MA p. 680 § 15-16, f.i.

bhatāhā describes the group with whom one lives in *bhāt* commensality *(bhatāhā < bhāt)*. Vice versa, *bhāt wāhek garnu* means 'to exclude someone from that commensality' (*wāhek/bāhek*, 'out of', 'outside' and *garnu*, 'to make'). Again, *bhātmā linu* is 'to admit/re-admit into *bhāt* commensality' (*linu*, 'to take'). Accordingly, the expression *bhāt pāni wāhek garnu* (lit 'to exclude from *bhāt* and water') stands for 'degrading someone to the status of an impure caste' of the category "Water-Unacceptable" *(pāni nacalnyā)*.[24]

The terms *bor (wor)* and *bhor* also need an explanation. As has already been pointed out, *bornu* (hence *bor*) means 'to defile through *bhāt* or water'; Turner[25] renders the noun *bor* by 'contamination' and 'confusion'. *bor* must not be confounded with *bhor*, 'mistake', as in *bhormā parnu*, 'to be mistaken/misled'. If, for example, a Brahmin takes water or *bhāt* offered by an Untouchable, he is defiled *(woryāko)*, and if he does not know with whom he is faced, he, the Brahmin, acts by mistake *(bhor)*. *bor* happens with or without *bhor*, the latter being simply an additional factual finding. Accordingly, the consequences of a *bor* can be merely "social" or both "social" and "penal".[26] The Brahmin, who knowingly accepts *bhāt* or water from the hand of an Untouchable, will be degraded to the offerer's status ('social' consequence). And he will be prosecuted, in addition, if he conceals his defilement and transfers it to his fellow caste members by continuing to live in commensality with them ("penal" consequence). The Untouchable, too, has to reckon with punishment if he misleads the Brahmin on purpose.

Fig. no. 4 summarises the consequences resulting from a deliberate acceptance of *bhāt* and/or water from a lower-ranking person. The passage of the MA[27] to which we refer here lists the receivers and offerers only by caste groups and not by individual castes. Under the heading "circumstances" is indicated what has been accepted, *bhāt* or water or both. The phrase "accepted and defilement transferred" means that the receiver concealed his act, thus defiling not only himself but other persons, too, in the sense of *bornu*.[28] If the receiver voluntarily denounces himself after committing the offence, he is degraded in any case, but not penalised.[29] The fine to be paid is indicated in Rupees ("Rs"). Let us add that in case of an acceptance by mistake the receiver always obtains absolution, provided he reports it to the authorities concerned (cf. pp. 170, 179ff.).

From the analysis of several selected cases in fig. 4 the following can be concluded:

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[24] As to the terminology cf. MA p. 403f.; p. 407ff; p. 650ff. among others.

[25] Turner 1965: 461, 484.

[26] This is a mere analytical distinction. Cf. also pp. 167ff.

[27] MA p. 407ff.

[28] If water has been accepted, not only one, but several castes can be affected. Should the receiver be an "Enslavable Alcohol-Drinker" and the offerer an Untouchable, the first is—virtually at least—in a position to defile all members of his caste category ("Water-Acceptable"), from the Brahmins down to his own fellow caste members, as all these normally do accept water from each other.

[29] MA p. 674 § 1; cf. also p. 159.

Fig. 4. Consequences of deliberate acceptance of *bhāt* and/or water from a status-inferior person

	caste group of receiver	caste group of offerer	circumstances	consequences for the receiver
1	"Cord-Wearer"	"Cord-Wearer"	a) bhāt accepted b) bhāt accepted and defilement transferred	degradation degradation + Rs 50
2	"Cord-Wearer"	"Non-enslavable Alcohol-Drinker"	a) bhāt accepted b) bhāt accepted and defilement transferred	degradation degradation + Rs 100
3	"Cord-Wearer"	"Enslavable Alcohol-Drinker"	a) bhāt accepted b) bhāt accepted and defilement transferred	degradation degradation + Rs 100
4	"Cord-Wearer"	"Water-Unacceptable" including Untouchable	a) bhāt and/or water accepted b) bhāt and/or water accepted and defilement transferred	degradation degradation+confiscation branding
5	"Non-enslavable Alcohol-Drinker"	"Non-enslavable Alcohol-Drinker"	a) bhāt accepted b) bhāt accepted and defilement transferred	degradation Rs 10 + absolution
6	"Non-enslavable Alcohol-Drinker"	"Enslavable Alcohol-Drinker"	a) bhāt accepted b) bhāt accepted and defilement transferred	degradation Rs 20 + degradation or absolution, depending upon the decision by caste members

(continued)

	caste group of receiver	caste group of offerer	circumstances	consequences for the receiver
7	"Non-enslavable Alcohol-Drinker"	"Water-Unacceptable" including Untouchable	a) bhāt and/or water accepted b) bhāt and/or water accepted and defilement transferred	degradation degradation + confiscation + branding
8	"Enslavable Alcohol-Drinker"	"Enslavable Alcohol-Drinker"	a) bhāt accepted b) bhāt accepted and defilement transferred	degradation Rs 5 + absolution
9	"Enslavable Alcohol-Drinker"	"Water-Unacceptable" including Untouchable	a) bhāt and/or water accepted b) bhāt and/or water accepted and defilement transferred	degradation degradation + confiscation + branding
10	"Water-Unacceptable" but only Touchable	"Water-Unacceptable" including Untouchable	a) bhāt and/or water accepted b) bhāt and/or water accepted and defilement transferred	degradation Rs 5 + degradation or absolution, depending upon the decision by caste members
11	"Water-Unacceptable" only Untouchable	"Water-Unacceptable" only Untouchable	a) bhāt and/or water accepted b) bhāt and/or water accepted and defilement transferred	degradation Rs 2 + degradation or absolution, depending upon the decision by caste members

Cases 4, 7, 9: The strong taboo placed on the demarcation line between the two caste categories "Water-Acceptable" and "Water-Unacceptable" is proved by the very measure of punishment. If the receiver belongs to a pure caste and the offerer to an impure one, the former has to reckon not only with his degradation to the latter's caste status, but also with branding[30] and the confiscation of his property. Unless the receiver was mistaken or misled *(bhor)*, his transgressing the demarcation line ("water-line") cannot be annulled by purification, punishment or expiation.

Cases 1 and 4: A receiver belonging to the "Cord-Wearers" is degraded in any case, even if the offerer is himself a "Cord-Wearer" and even if the defilement has not been transferred to other persons. The penal measures are graded and increase proportionally to the status disparity between receiver and offerer: Rs 50, Rs 100, ... confiscation, branding.

Cases 5 to 11: By contrast, the receiver of any non-"Cord-Wearer" caste is not always degraded. Paradoxically, his absolution and re-admission to his caste are all the more possible if he transferred the defilement to his fellow caste members, too! In cases 5 and 8, where receiver and offerer belong to the same caste group, a re-admission is even explicitly prescribed! In the remaining cases, the decision on re-admission is left to the fellow caste members.

The grading of the consequences as manifest in our compilation suggests the following conclusions:

The transgression of the "water-line" separating the pure castes from the impure ones entails irrevocable consequences, regardless of the receiver's caste. Apart from this violation, however, the consequences can be correlated with the status position of the receiver, on the one hand, and with that of the offerer, on the other. In other words, the gravity of the consequences increases a) with the absolute status position of the receiver, and b) with the status disparity between receiver and offerer. In cases 1, 2, 3, 5, 10 and 11 the amount of the fines is in itself revealing. The role of the absolute status position is well illustrated by the fact that, as already mentioned, a receiver of the "Cord-Wearer" caste group is degraded in any case, quite contrary to receivers belonging to other caste groups.

Judging from this gradation, the purity of the highest caste group, the "Cord-Wearers", seems to be the one on which the highest value is set. Their purity is the most vulnerable, and its loss inevitably means degradation. The consequence of a violation of commensality rules even *within* this caste group (if both offerer and receiver are "Cord-Wearers") is more severe than in cases in which members of

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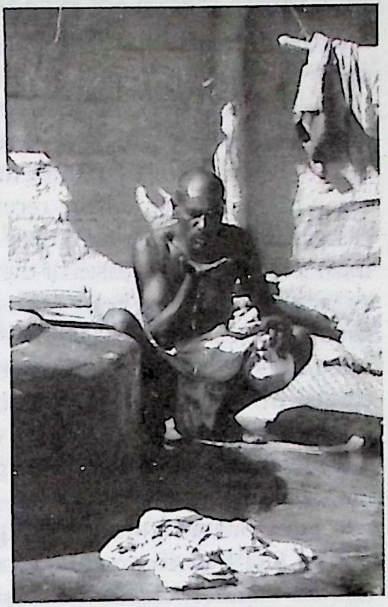
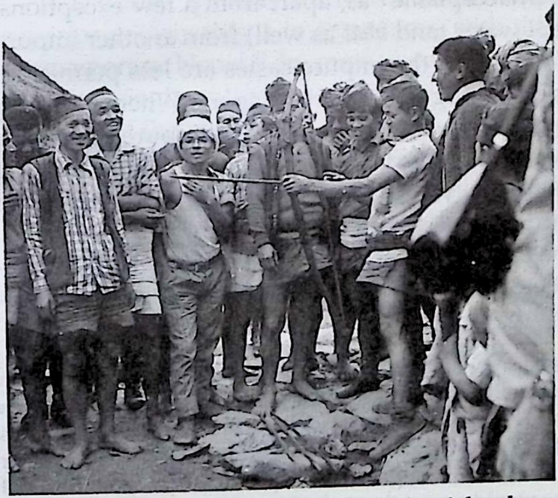
[30] For branding, the MA frequently uses the phrase *ek akṣar khodi*, 'branding a letter'. According to Adhikari (1976: 108, 113), it is the letter *da* (? <*dāmal*, see pp. 160ff.) which is branded on the left cheek of the culprit. As branding goes hand in hand with degradation, there is no doubt, however, that in some cases the initials of the name of the caste into which the degraded person had been integrated were branded. A textbook on judiciary matters furnishes clear evidence: *pāni nacalne ra chiṭo hālnuparne jātmā milāūdā sohī jātko 1 akṣar piḍaūlāmā ... khopī*, that is, 'while integrating [the degraded] into a "water-unacceptable" and untouchable caste, one letter of that caste is branded [lit. pierced] on the calf', cf. Gorkhā adālati śikṣā 1986: 35.

1. **Maize terraces in Central Nepal. In the background: cattle grazing on wheat fields after harvest.**



2. **A Brahmin taking a bath, Terai.**



3. **Tāmāṅg men participating in a ceremonial archery on the tenth day of Dasaĩ festival.**

4. **A Kāmi chasing the neck part of a water jug, Central Nepal.**

other caste groups are involved, obviously because there is more at stake. As "Cord-Wearers" possess the highest amount of collective purity, this purity can only be defended efficiently against outsiders if it is properly protected within one's own caste group.

This does not mean, however, that the severity of commensality rules simply decreases linearly with the offerer's status. Let us compare case 1 b with cases 5 b, 8 b, 10 b and 11 b. In each of these cases both receiver and offerer belong to the same caste group, and the receiver has transferred his defilement to his fellow caste members or others. We see that such a violation of the rules is indeed judged most leniently in the cases of the two medium-ranked caste groups (cases 5 and 8) as, after the fine has been paid, absolution is guaranteed. As to the impure caste groups (cases 10 and 11), however, the absolution depends on the decision the offender's fellow caste members have to take. Finally, a "Cord-Wearer" is excluded from the possibility of obtaining absolution (case 1).

Hence it follows that collective purity is least vulnerable in the middle of the caste hierarchy—and not, as might be expected, at the bottom. An Untouchable is more polluting to another higher-ranking Untouchable than, say, a "Non-enslavable Alcohol-Drinker" is to another higher-ranking "Non-enslavable Alcohol-Drinker".[31]

The fact that commensality rules tend to become more strict at the bottom renders manifest one of the most important structural principles in the hierarchy conception of the MA.

As already shown, the pure castes of the category "Water-Acceptable" may not accept water from the impure castes of the category "Water-Unacceptable", but they may accept it from each other reciprocally. This reciprocity does not hold good within the category "Water-Unacceptable" as, apart from a few exceptions, no impure caste is entitled to accept water (and *bhāt* as well) from another impure caste ranking lower than itself. To sum up, the impure castes are less permissive among themselves than the castes belonging to the pure category. Whereas among the pure castes only *bhāt* is accepted unilaterally, among the impure ones both water and *bhāt* follow the rule of unilaterality. Restrictions go so far as, f.i., the untouchable Kāmi and Sārki do not take water and *bhāt* from one another, even though they intermarry and regard themselves as equal-ranking.[32]

This mutual demarcation of the castes "Water-Unacceptable" is rather surprising. One would rather have expected the opposite, namely that the "Water-Acceptable" should behave so restrictively since they have, according to our postulate, to "defend" a much higher amount of purity than the impure castes. It has still to be analysed to what extent this reciprocal acceptance of water among the pure castes is to be regarded as a specifically Nepalese phenomenon. Be that as it may, the Hindi book Vīr Vinod, written in Rajputana at the close of the 19th century, observes, evidently with some amazement, that in Nepal even the Brahmins accept water from castes ranking lower than themselves, such as the Cepāṅg or the Lāmā (Tāmāṅg).[33]

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[31] What is striking is the incongruence between the amount of damage caused by the pollution and the gravity of consequences. For, unlike the "Cord-Wearers" (cases 1-3), a receiver from other caste groups (cases 5, 6, 8, 10 and 11) may be granted absolution in principle. Notably this applies only to those instances where the receiver has polluted not only himself but also other persons. But if he has polluted only himself he is degraded in any case. Why is pollution and pollution not one and the same? One would expect that in both cases the receiver "absorbs" the same amount of impurity, and if he transfers it to his fellow caste members the latter ought also to be degraded. Indeed, the reverse is true: both are granted absolution. Here again, the purity conception of the MA is not subject to determinism in the sense of natural law.

[32] On Kāmi and Sārki cf. Höfer 1976; on the exceptional position of the Muslim castes pp. 139ff.

In India, the observances vary regionally. The particularly purity-conscious Havik Brahmins in Kannada (South India) do not accept water from any caste but their own,[34] whereas in Uttar Pradesh the rules "are on the whole the same as regarding the acceptance of *pakkā* food [prepared with fat], but with a tendency to greater laxity",[35] that is, they roughly correspond to the situation in Nepal.

Eating and physical proximity: avoidance measures

> "Sheer physical proximity while eating is very important. At village feasts where diners are ranged in seated rows, those of higher jati will not tolerate those of much lower rank to sit in an unbroken line with them." (Mandelbaum 1970, I: 198).

The MA also elucidates the dangers involved in every contact with persons belonging to other castes than one's own:

1. The MA[36] prohibits an Untouchable from entering the house of a status-superior person; this is in accordance with the practice widely to be observed in contemporary Nepal.[37] In another paragraph it is laid down that if an Untouchable knowingly enters the ground floor or the attic *(talā coṭā)* of a house where someone of the pure castes is about to prepare a meal, the house has to be purified *(cokhyāuni)*; the Untouchable is to be fined and also liable to afford compensation for whatever he has touched *(chut lāgnyā wastuko wigo)*.[38]

2. Any member of the pure castes is free to pluck fruits in the company of someone belonging to the impure castes. Unless contact is made *(chātchut)*, it is not defiling and is not a punishable offence to pluck, or pick up from the ground and eat (on the spot) the fruits of the same tree.[39]

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[33] Riccardi 1975: 202.

[34] Harper 1964: 156.

[35] Blunt 1969: 98, cf. also Dumont 1966: 183f.

[36] MA p. 370 § 10.

[37] Höfer 1976.

[38] MA p. 371 § 14. In Nepal, the ground floor is generally used as the dining and living room. Newār houses, however, are exceptional in that their kitchens are situated in the attic.—The paragraph cited does not specify whether the defilement is due to the touching of food.

[39] MA p. 374 § 27.

Evidently, the MA wants to restrict an all too "narrow-minded" practice of avoidance. The same is true of the following paragraph:

3. A "Cord-Wearer" is allowed to partake of *bhāt* which has been cooked during the night and/or which has not been served immediately after its preparation—provided it was not touched by somebody who is not commensal with the eater.[40] Obviously the provision makes plain that a virtual lack of control by cooking in the darkness or by putting aside the food after cooking is not sufficient to regard it as polluted. Interestingly, this opinion is at variance with the general practice in Nepal, according to which stale *(bāsi)* food and water are considered impure, *juṭho* (cf. pp. 13f.). Even some of the classical Indian legal sources maintain that food which has been left untouched overnight or for one day should be declined.[41]

There is another provision addressed to the "Cord-Wearers":

4. A "Cord-Wearer" may partake of *bhāt* if the cook and/or eater wear trousers *(suruwāl)* and jacket *(lawedā)*; their clothes may not, however, be made of leather (probably shoes and belt).[42] This, again, is contrary to the practice of high castes, Brahmin in particular, who even nowadays take their meals or do their cooking (when on journeys) with their torso uncovered and clad in a fresh cloth draped around their hips.[43]

The hookah *(hukkā)*

In the anthropological literature on India, the rules on sharing one's hookah with members of other castes are often referred to as status criteria. The hookah can transfer impurity as its sharing implies oral contact (saliva) with one's fellow smokers.[44] The relevance of this also emerges from the following provisions in the MA:

1. If X unwittingly *(bhor)* uses Y's hookah, who belongs to an inferior caste from which X is not to accept *bhāt (bhāt nacalnyā ghaṭi jāt)*, X has to go on a pilgrimage to a nearby place *(tirtha)* in order to be given absolution.[45]

2. If a member of the touchable (pure and impure) castes unwittingly smokes a hookah which has been used or touched by an Untouchable, he obtains absolution by paying Re 1, a fee called *godān*.[46]

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[40] MA p. 392 § 46.

[41] Kane 1974: 784 quoting Manu, Gautama, Yājñavalkya, etc.

[42] MA p. 392 § 48.

[43] On bathing and change of clothes before a meal among some castes in Central Nepal cf. Stone 1977: 124ff.; and among the Havik Brahmins of South India cf. Harper 1964: 153-157.

[44] The hookah usually consists of three parts, namely the bowl (with charcoal cinders and tobacco), the water container and the tube with a mouthpiece. As these elements are not fixed together, the hookah can also be used without the tube or even without the water container. On details cf. p. 200. For a discussion of the Indian context see Dumont 1966: 116f.

[45] MA p. 374 § 29.

[46] MA p. 374 § 26. On *godān* cf. pp. 161f., 168f.

3. If a member of the pure castes knowingly shares the hookah with a member of the touchable impure castes, he has to pay a fine of Rs 20 and an additional fee of Rs 2 as *godān* for his absolution.[47]

In the following paragraph, the role of water as a vehicle of impurity seems to be emphasized:

4. If a member of the pure castes smokes his own hookah while sitting together *(saṅga wasi)* with people belonging to the touchable impure castes, and if his hookah contains water *(pāni hālyāko)*, he has to pay a fine of Rs 5 and Re 1 as *godān* for his absolution.[48] (The phrase *pāni hālyāko* obviously means that while smoking the water container was attached to the bowl.) In this case, the hookah was not even shared, and the mere presence of water and of an impure caste was sufficient to produce the pollution. In the same paragraph is stated that, in case the hookah did not contain water, fining and absolution can be dispensed with.[49]

In these four cases, too, one has to distinguish between mere social consequences, on the one hand, and penal consequences, on the other. Punishment *(daṇḍ)* is only inflicted in the case of a knowingly or intentionally committed offence. But any offence, knowingly or unknowingly committed, entails pollution and thus a temporary "decline in status" which lasts until absolution is given.

Physical contact and untouchability

Just as saliva or water, mere bodily contact can also act as a vehicle of impurity.

Thus, the MA determines as follows:[50] Members of the pure castes are allowed to cross a river, be it over a bridge, over stepping-stones or in a boat, in the company of Untouchables. Both are also free to sit together on a bench *(phalaicā)* lodged in the ground and to dine next to each other—provided that no bodily contact *(chut, chātchut)* is involved and that a certain distance *(alag alag)* is kept between them.[51]

Here the emphasis is placed on physical contact, *chut*, a term from which the name *achuti*, 'untouchable', derives.[52] Another synonym for untouchable castes is *choyāchiṭo hālnuparnyā jāt*, *choyā* (or *choi*) deriving also from the verb 'to touch', namely *choinu*. The second element, *chiṭo*, lit. 'water drop', refers to the purification necessitated by contact with Untouchables: the person touched sprinkles himself with water which has been brought into contact with gold, which is held to be the "purest" of all metals. This water is also called in common speech *sunpāni*, lit. 'gold water'. If this purification is neglected, the MA prescribes that the person polluted has to pay a fine before he obtains absolution.[53]

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[47] MA p. 373 § 23.

[48] MA p. 373 § 23.

[49] Ibid.

[50] MA p. 374 § 28.

[51] The particular importance of "lodged in the ground" *(jaminmā ṭāsyāko < ṭāseko*, lit. 'stuck', 'joined') remains obscure. The Havik in South India believe the soil to insulate against pollution (Harper 1964: 173), and the same may hold true for Nepal. Here, such benches are mostly on the roofed verandahs *(pīṛi)* on the frontal part of the houses; they are firmly lodged in the ground, which is from time to time plastered with red clay and cow-dung. The plastering is also believed to have a purifying effect in general.

[52] *achuti* < *a*- (privative prefix) + *chuti* < *chut*, 'touch'. Turner 1965: 8, 200 gives: *achuti*, 'untouchable', 'low caste'; and *chāt-chut*, 'physical touch'. Cf. also Dumont 1966: 168 on untouchability in India in general.

Here, again, the legislator accepts certain extenuating circumstances. For instance, even an untouchable woman can in case of emergency act as mid-wife to a non-untouchable mother. It is noteworthy that in this case two rules are violated: first, the house is entered by the untouchable person and, second, the physical contact with her is unavoidable due to the particular circumstances. Nevertheless, the passage in question states that the mother regains her purity *(śuddha humcha)* simply by taking a bath *(snān)*, and that absolution is not necessary.[54]

To understand the MA's regulations in their full extent, one may quote an example from South India. The orthodox Havik Brahmins in Kannada believe that by taking a ritual bath one attains a particularly high state of purity *(maḍi)* which fades into an ordinary state of purity *(mailigē)* after having a meal, after sleeping or by touching another Havik who himself is in a state of *mailigē*. A Havik also loses his *maḍi*-purity by touching someone of any lower caste than his own, regardless of whether the latter is *maḍi* or not, because a non-Brahmin cannot be as much *maḍi* as a Brahmin. Finally, a Havik becomes polluted *(muṭṭucheṭṭu)* if he comes into contact with a menstruating woman (of the Havik or any other caste) or with an Untouchable.[55] Apart from the regulations on the observances at the time of death and childbirth, the MA does not deal with the question whether and when bodily contact with a lower-ranking, but touchable caste is defiling in the sense of the Haviks' *mailigē*.

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[53] MA p. 679 § 12. The details of the purification were given to me by an untouchable informant from the Kāmi caste. According to the MA and other informants, it is always the higher-ranking person who is obliged to purify himself. The Kāmi informant, on the contrary, stated that it was rather the Untouchable's duty to purify himself after having had contact, with a non-Untouchable (!?).—To my knowledge, the *choichiṭo* purification is nowadays no longer performed, even though members of higher castes still try to avoid bodily contact with an Untouchable, cf. also Höfer 1976: 352f.

[54] MA p. 370 § 10. The paragraph adds that in cases of emergency, the navel cord may even be severed by the husband or by the mother herself.

[55] Harper 1964; 155ff.

V

SEXUAL RELATIONS

> "By assiduously protecting his wife, a man protects (the purity of) his progeny and family as well as his character, Self, and virtue. The husband, by entering (into the body of) the wife, takes birth as the foetus in her womb ..." (Manu Saṁhitā 1909: 316).

General remarks

More than one third of the MA deals with sexual relations, both inter-caste and intra-caste. The scrupulous accuracy of the legislator amply confirms the importance these relations have for the maintenance of the hierarchy. The consequences of incest, adultery, rape, perversion, premarital intercourse and the like not only affect the persons immediately involved, but also their offspring and eventually even their fellow caste members.

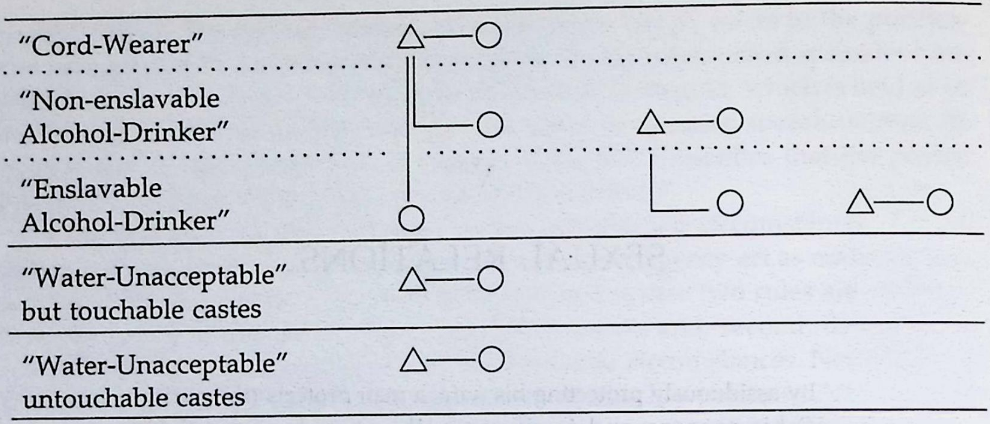
Before going into detail, we should make it clear that sexual intercourse is forbidden in the subsequent cases:

1. sodomy;
2. incest;
3. intercourse a) between members of pure and impure castes ("Water-Acceptable" and "Water-Unacceptable"), and b) *within* the impure caste category ('Water-Unacceptable") between members of touchable and untouchable castes;
4. intercourse with a woman of higher caste status than the man, irrespective of whether both belong to pure or impure castes.

Furthermore, regardless of the partners' castes, intercourse has certain consequences in any case (social consequences at least):

5. for the woman in general;
6. for both partners in case of adultery.

Conversely, unions with a woman of equal or lower caste status are legal in principle and without penal consequences for the male partner, provided that rule 3 is not violated and the union is not regarded as adultery. Schematically represented, the following unions are legal:


"Cord-Wearer"
"Non-enslavable Alcohol-Drinker"
"Enslavable Alcohol-Drinker"
"Water-Unacceptable" but touchable castes
"Water-Unacceptable" untouchable castes

In the aforesaid six rules, three interdependent factors determine the consequences to be expected: the degree of relationship, the sex and the caste of the parties involved.

As to the degree of relationship, it is only of direct relevance in the case of incest. Sex, as a factor, takes on increased significance in rules 4 and 5. According to rule 4, intercourse is prohibited if the woman is of higher status than the male partner. It is, however, considered legal if, conversely, the woman's status is equal or, within certain limits, lower than his.[1]

Rule 5 states that the woman is more affected than the man. Her specific personal status, called henceforth "feme's status", is affected even by legal intercourse: it is devalued with the increasing number of men with whom she has had intercourse or lived in connubium.

The caste factor determines above all the status difference within which sexual intercourse is permitted (rule 3).

The factors degree of relationship, caste and sex are interdependent. Firstly, the decline in the *feme's status* can also entail a degradation in her *caste status* and in the caste status of the children born to her, as well. Secondly, the gravity of the consequences brought about by intercourse increases the higher the woman's caste is. Thirdly, even the definition of which degree of relationship is to be regarded as incestuous varies according to the caste affiliations of the parties involved. The patrilateral cross-cousin marriage, for example, may be permitted to some castes and strictly forbidden to others. Fourthly, the valuation of incest also depends on the feme's status of the woman involved.

Sexual intercourse can imply pollution, the degrees of which vary according to the actual configuration of the three factors. The impurity can be a "transferred" or a "produced" one. A violation of rule 3 means that impurity is transferred by the lower-ranking party. Impurity is produced, however,

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[1] Here the term "status" is used in reference to caste. It will be shown below that a slight status disparity may exist even if both parties have the same caste name, cf. pp. 40, 86f., 120ff.

Fig. 5. Attempted adultery

	status of seducer (caste group)	status of woman caste group	in relation to seducer	fine in Rs
1.	"Water-Unacceptable" incl. Untouchable	"Water-Acceptable"	higher	100
2.	"Water-Acceptable" "Alcohol-Drinker"	"Water-Unacceptable" incl. Untouchable	lower	80
3.	both enslavable and unenslavable	"Cord-Wearer"	higher	
4.	"Cord-Wearer"	"Cord-Wearer"	equal	50
5.	"Cord-Wearer"	"Non-enslavable Alcohol-Drinker"	lower	
6.	"Non-enslavable Alcohol-Drinker"	"Non-enslavable Alcohol-Drinker"	equal	
7.	"Enslavable Alcohol-Drinker"	"Non-enslavable Alcohol-Drinker"	higher	30
8.	"Water-Unacceptable" incl. Untouchable	"Water-Unacceptable" but touchable	higher	
9.	"Cord-Wearer"	"Enslavable Alcohol-Drinker"	lower	
10.	"Non-enslavable Alcohol-Drinker"	"Enslavable Alcohol-Drinker"	lower	
11.	"Enslavable Alcohol-Drinker"	"Enslavable Alcohol-Drinker"	equal	15
12.	"Water-Unacceptable" but touchable	Untouchable	lower	
13.	"Water-Unacceptable" but touchable	"Water-Unacceptable" but touchable	equal	10
14.	Untouchable	Untouchable	equal	5

in the case of incest, which involves persons of equal or slightly differing caste status. Once generated, both types of impurity can be transferred to other persons, and a produced impurity can thus become a transferred one. For example, a person polluted (and degraded) on account of incest can defile the members of his/her former caste by offering them *bhāt* or having sexual intercourse with them.

Pollution, both produced and transferred, can entail a degradation in caste status, unless the impurity acquired is redeemable by expiation and purification.

Status difference and gravity of offence

Fig. 5 refers only to the consequences of attempted adultery, which implies physical contact, but not sexual intercourse. The fine, listed in the column on the extreme right, is to be paid by the seducer. Here again it is postulated that the amount of the fine is a parameter of the gravity of the offence.[2]

The gravity of the offence accrues from two interdependent factors, namely a) from the absolute status position (caste) of the woman, and b) from the relative status difference between both parties.

Fig. 6. Sexual intercourse with a woman of higher status (hypogamous union)
(simplified synopsis)

woman	man	consequences	
		for the woman	for the man
1. Upādhyaya Brahmin	Rajput (Ṭhakuri), asal Jaisi and Chetri	(not specified)	2 years imprisonment
2. Upādhyaya Brahmin	Sannyāsi and lower Jaisi	(not specified)	2 years imprisonment
3. "Cord-Wearer" (generally)	"Non-enslavable Alcohol-Drinker"	(not specified)	3 years imprisonment
4. "Cord-Wearer" (generally)	"Enslavable Alcohol-Drinker"	(not specified)	1 year imprisonment + enslavement
5. "Cord-Wearer" and "Non-enslavable Alcohol-Drinker"	"Water-Unacceptable" but touchable	degradation + branding	4 years imprisonment + enslavement or 8 years imprisonment
6. "Cord-Wearer" and "Non-enslavable Alcohol-Drinker"	Untouchable	degradation + branding	capital punishment or killed by husband of woman
7. "Non-enslavable Alcohol-Drinker"	"Enslavable Alcohol-Drinker"	degradation (?)	enslavement
8. "Enslavable Alcohol-Drinker"	"Water-Unacceptable" but touchable	degradation + branding	enslavement or 2 years imprisonment
9. "Enslavable Alcohol-Drinker"	Untouchable	degradation + branding	enslavement + 1 year imprisonment (?)
10. "Water-Unacceptable" but touchable	Untouchable	degradation	(?)
11. Untouchable (Kāmi, Sārki, Kaḍārā)	Untouchable (Damāi, Gāine, Bādi)	fine of Rs 10 + degradation	fine of Rs 20

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[2] Compiled from MA pp. 485-487.

Rs 100 is actually the highest fine, since in this particular case the woman is of superior status and the boundary between pure and impure caste has been transgressed (cf. rules 3a and 4, p. 35). Rs 50 is the highest fine to be paid in case both parties are of equal status (at least of the same caste group).

In all other cases (6, 11, 13, 16) of equal status the amount decreases from Rs 30 to Rs 15, Rs 10 and 5 respectively, in accordance with the absolute status level of the parties. (If the woman involved was not married, this combination would remain unpunished.)

As the fine of Rs 30 shows, the advances made by an Untouchable to a woman of a touchable impure caste (cf. rules 3b and 4, p. 35) are as less serious as those made by a "Cord-Wearer" to a lower-ranking woman of the caste group "Non-enslavable Alcohol-Drinker".

Status disparity and pollution

The consequences brought about by consummated intercourse are compiled and shown in the following figures. In fig. 6 the woman's status is higher than that of the man. In fig. 7, the man is either higher or equal in status. Both figures refer to cases where sexual intercourse is performed with mutual consent and not voluntarily denounced by the parties.[3] The woman is a major, that is over 11 years, and either virgin or widowed.[4]

Let us first analyse fig. 6: *intercourse with a higher-ranking woman*. We see that the man incurs a penalty in any case and that this penalty increases proportionally with the woman's status, on the one hand, and with the status disparity between man and woman, on the other. As to the woman involved, mere penal sanctions and degradation to the man's status are to be expected only if the man belongs to the caste category "Water-Unacceptable". This also applies to a woman who is a member of a "Water-Unacceptable" caste herself.

The prohibition is compatible with that of the so-called hypogamy. The classical Indian legal sources call hypogamy *pratiloma*, 'against the brush', and disapprove of it.[5] The MA, too, prohibits a hypogamous connubium and prescribes that under certain circumstances it must be dissolved by coercive measures. We may also conclude from the context that the woman will in any case be degraded to the status of her male partner.[6]

Fig. 7: *intercourse with a woman of equal or lower status* requires a more detailed discussion.

In the column "concomitant circumstances" the line "no defilement through *bhāt*" shows that a man's degradation[7] to the status of the woman's caste status is only taken into account in the subsequent cases:

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[3] On compulsory self-denunciation cf. also pp. 159, 169f., 180.

[4] Both fig. 6 and 7 represent a slightly schematised synopsis of MA pp. 407ff., 653-674, 679-680.

[5] Cf. Dumont 1966: 152-167; Kane 1974: 50ff., 61ff. and 427-639.

[6] Cf. MA p. 445 § 9, p. 452ff. § 32-35.

[7] If the offence is committed by mistake (*bhor*), absolution seems to be obtainable in nearly all

a) man = "Water-Acceptable" and woman = untouchable;

b) man = "Water-Unacceptable", but touchable, and woman = untouchable; whereas

c) as to intercourse between a "Water-Acceptable" man and a "Water-Unacceptable", but touchable woman, it is explicitly laid down that, after the pilgrimage, the man is *śuddha*, 'ritually pure', and thus absolved.

If we can interpret degradation in (a) and (b) as a consequence of pollution, the following has to be concluded:

Sexual intercourse as such (without additional defilement through *bhāt* acceptance) with an untouchable woman is polluting for any non-untouchable man, whether he is of a pure or an impure caste. Likewise, intercourse with a woman of the impure castes ("Water-Unacceptable"), whether untouchable or not, is polluting for any man of the pure castes ("Water-Acceptable"). Finally, intercourse with an impure, but touchable woman is redeemable by expiation (c), whereas intercourse with an untouchable woman is not.

In all other cases the man is polluted and thus liable to degradation only if he accepts *bhāt* from the lower-ranking woman. Obviously, pollution is not brought about by intercourse. Let us anticipate that the rules dealt with here are entirely in line with those valid for conjugal relations. That is to say, a man is allowed to marry a woman of a lower-ranking caste than his, without being allowed to accept *bhāt* from her.[8]

We notice, however, that acceptance of *bhāt* is defiling and punishable even if the woman has the same caste status as the man (cases 1, 7, 20 and 22). How is this kind of defilement brought about?

We know that the Upādhyaya Brahmins, the Ṭhakuri and the Chetri are divided into caste-internal status groups, some of which are also mentioned by name. As the ethnographic sources show, these status groups are not commensal with each other, in spite of the common caste name.[9]

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cases. On absolution cf. pp. 161f., 167f., 179f.

[8] MA pp. 448-449. This is in accordance with what has been stated with reference to *bhāt* acceptance in general, cf. pp. 19f., 22.—The interpretation of fig. 7 poses some problems. Let us compare, for example, cases 1 to 11 with regard to the consequences (amount of fine, degradation, etc) in case of *bhāt* acceptance. It seems that an Upādhyaya or a Rajput man's guilt diminishes proportionately with the caste status of his female partner. Apart from cases 2 and 7, which are not fully settled, this tendency is general. Comparing, now, fig. 4 (acceptance of *bhāt* and water) with fig. 7, we see a discrepancy, as in fig. 4 the reverse is true: the gravity of the offence increases with the status disparity between offerer and receiver. In fig. 4, the receiver is inevitably degraded to the offerer's status if he knowingly accepts *bhāt* from him. In fig. 7, however, this applies only to cases 2 and 8. Apparently *bhāt* acceptance connected with sexual intercourse is valued differently than *bhāt* acceptance without sexual intercourse. One may speculate that, as to fig. 7, a forbidden action, namely *bhāt* acceptance, is neutralised to some extent by another, permissible action, namely sexual intercourse.

[9] Cf. Fürer-Haimendorf 1960: 16; Fürer-Haimendorf 1966: 34f.; Fürer-Haimendorf 1971: 13ff., 18ff.; Bista 1972 a: 21. It is interesting to note that the later edition of the Muluki Ain (MA 2009,

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काठमाडौं, नेपाल

				fine of Rs. 25 + pilgrimage if man is "Enslavable Alcohol-Drinker
			man accepts bhāt or water from woman	confiscation + 1 y. imprisonment degradation to status of woman
			man accepts bhāt or water from woman and transfers defilement to others	confiscation + branding+ 1 year imprisonment + degradation to status of woman
19.	"Water-Acceptable"	Untouchable	whether man accepts bhāt / water or not	confiscation + branding + 1 y. imprisonment + degradation to status of woman
III.	both man and woman = "Water-Unacceptable"			
20.	"Water-Unacceptable" (impure) but touchable	"Water-Unacceptable" (impure) but touchable of same status as man	(no defilement through bhāt) (not specified)	legal
			defilement through bhāt	fine of Rs. 4
21.	"Water-Unacceptable" but touchable	"Water-Unacceptable" but touchable: of lower status than man	no defilement through bhāt	legal
			man accepts bhāt from woman and transfers defilement to others	fine of Rs. 4 + degradation to status of woman
22.	"Water-Unacceptable" untouchable	"Water-Unacceptable" untouchable: of same status as man	(no defilement through bhāt) (not specified)	legal
			defilement through bhāt	fine of Rs. 4
23.	"Water-Unacceptable" untouchable	"Water-Unacceptable" untouchable: of lower status than man	no defilement through bhāt	legal
			man accepts bhāt from woman and transfers defilement to others	fine of Rs. 4 + degradation to status of woman
The above-mentioned case (no. 23) differs in details from from the following one where six untouchable castes are specified by name:				
24.	untouchable: Kāmi Sārki Kadārā	untouchable: Damāi Gāine Bādi all of lower status than Kāmi, etc.	man (defiled by sexual contact) does not transfer his defilement to his fellow caste members through bhāt or water	degradation to status of woman
			man transfers his defilement to his fellow caste members through bhāt or water	fine of Rs. 10 + degradation to status of woman

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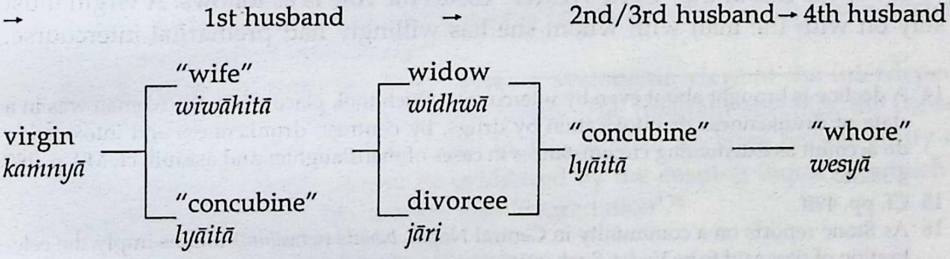
There is a further paramount factor: the woman's personal status, which we term "feme's status". According to the MA,[10] an Upādhyaya Brahmin is obviously not obliged to accept *bhāt* from his Upādhyaya wife if she has been "brought" *(lyāyāko)* by him as a virgin *(kaṁnyā = kanyā)*; the term "brought" implies that she has not been married with full rites (see below). As to the rest of the "Cord-Wearer" and "Alcohol-Drinker" castes, *bhāt* acceptance from a wife is regulated as follows: It is made incumbent on the husband and the families of his real and classificatory brothers to accept *bhāt* from the wife if she has been "brought" as a virgin and is of a group (caste, status group) from whose members the husband and his relatives customarily accept *bhāt*. The husband is, however, not obliged to accept *bhāt* from his wife if the latter was married once before her present marriage, that is, if she is a widow *(widhwā/bidhwā)* or divorcee *(jāri)*; and finally, *bhāt* acceptance from her is forbidden if the woman has already been married three times (before her present marriage) or has had intercourse with three men in her life: such a woman is regarded as *wesyā (besyā)*, a 'whore'.[11]

In principle, only a virgo intacta can be married with full rites and called *wiwāhitā*.[12] All non-*wiwāhitā* are considered *lyāitā* or *rākheko*, literally 'brought' or 'kept' wives.[13]

It must be emphasised that there is no such differentiation with regard to men. The number of women with whom a man has had non-polluting and legal intercourse does not affect his caste status. The woman, however, is polluted by every man with whom she indulges in sexual intercourse, irrespective of her male



V, p. 1f. § 3) explicitly allows intermarriage and mutual *bhāt* acceptance between the two divisions of the Upādhyaya, namely the Kumāi and the Purbiyā Brahmins. Cf. also below p. 42.

[10] MA p. 389 § 34.

[11] MA p. 448f. § 20-23, p. 411 § 15; cf. also Bista 1972 a: 24, 29; and Fürer-Haimendorf 1966: 32-35 on the Chetri in particular.

[12] *wiwāhitā* < *wihā/bihā*, 'marriage'. To my knowledge, only the "Cord-Wearer" castes distinguish precisely between *wiwāhitā* and non-*wiwāhitā* wives. The MA (p. 377 § 2) distinguishes between three types of female conjugal partners: a) *wihā gari lyāyākā*, 'brought by performing the full wedding rites' (= *wiwāhitā*), b) *diyo kalas puji lyāyākā*, 'brought by performing the rites of the lamp and water-pot' (a simplified ritual), and c) *manomānsaṅga lyāyākā*, 'brought by consent' (without any ritual). b) and c) seem to refer to *lyāitā* wives.

[13] MA p. 389 § 34, p. 391 § 41.

partner's caste and the concomitant circumstances, such as *bhāt* acceptance, etc. This is proved by the mere fact that the woman is excluded from the *bhāt* commensality with her relatives when her feme's status declines. Such a decline can be brought about by remarriage as well as by premarital intercourse or adultery.[14]

Obviously, feme's status and caste status are interdependent. The feme's status of the mother can influence her children's caste status.[15] Moreover, a decline in feme's status can also result in a decline of caste status. Finally, a girl, although deemed virgin but belonging to a caste ranking lower than the bridegroom's, cannot be married as *wiwāhitā*, at least in principle.[16]

Five examples drawn from the MA should illustrate this interdependence:

1. An Upādhyaya Brahmin man having had premarital intercourse with an Upādhyaya virgin is obliged to keep her. However, she does not pass for *wiwāhitā* ('wife'), but only for *lyāitā* ('concubine'). The children of such a union are ascribed the caste status of *asal* Jaisi and not that of Upādhyaya.[17] The same applies to the children of an Upādhyaya man and a remarried Upādhyaya widow.[18] We see that in both cases the decline in the feme's status entails a decline in the caste status of the offspring. It must be added, however, that, according to my informants, not only the children, but also their mothers (the virgin and the remarried widow) are regarded as Jaisi. Thus the meaning of the line "degraded to the status of woman" in fig. 7, case 1, becomes clear: The Upādhyaya man is himself degraded to Jaisi if he accepts *bhāt* from an Upādhyaya virgin or widow after having intercourse with her.

2. For the rest of the "Cord-Wearer" castes the rule is as follows: A virgin must stay on with the man with whom she has willingly had premarital intercourse,

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[14] A decline is brought about even by intercourse which took place while the woman was in a state of drunkenness or intoxication by drugs. By contrast, drunkenness and intoxication do account as extenuating circumstances in cases of manslaughter and assault, cf. MA p. 290 § 35-36.

[15] Cf. pp. 49ff.

[16] As Stone reports on a community in Central Nepal, *bihāite (wiwāhitā)* unions imply the celebration of rites said to be Vedic. Such unions are mostly endogamous, but specific "sanctioned hypergamic unions" between a Brahmin man and a Ṭhakuri or Chetri woman can also be recognized as *bihāite* marriages. In any case, however, a *bihāite* marriage is the first union of a woman, mainly resulting from child marriages still practised among the "Cord-Wearer" castes. Whereas a man can repeatedly marry *bihāite* wives, a woman is only once *bihāite*, namely at her first marriage (cf. Stone 1977: 114ff., 121, 147). The fact of being a *lyāite (lyāitā)* wife entails a lowering of caste status for a woman because her caste members do not accept *bhāt* from her after her elopement. Thus "she assumes a lower status within her original caste, [...] whether she elopes into a higher caste, her own caste or into a lower caste". (This explains the meaning of the line "woman defiles *bhāt* of man's commensals" in our fig. 7.) The decline in status is in connection with the general rules according to which a woman violates caste purity by extramarital intercourse. Her husband and his kin no longer accept food cooked by her, and the marriage is dissolved (Stone 1977: 114ff., 152).

[17] MA p. 654 § 7.

[18] MA p. 654 § 7, p. 537 § 2.

provided they are both of the same caste and can take *bhāt* from each other *(jāt mildā bhāt calyākā)*. That the woman is regarded as *wiwāhitā* wife emerges from the text of the paragraph enjoining the husband to be fed with *bhāt* by her publicly. The progeny of such a couple is entitled to a normal share of inheritance, equal to the share of a *wiwāhitā*'s offspring *(wiwāhitākā sarahako aṃs)*.[19]

3. A Rajput man having had premarital intercourse with a Jaisi virgin, and vice versa, a Jaisi man having had intercourse with a Rajput virgin, must keep her as *rākheko*. Although the woman adopts her husband's caste *(usai jātmā milāidinu)*, the latter is not obliged to accept *bhāt* from her *(bhātmā kar lāgdaina)*. Children from such a union are neither Rajput nor Jaisi but Hamāl, and their fathers' relatives must not take *bhāt* from them.[20]

4. Evidently, the higher the woman's caste status, the more exposed she is to pollution. With reference to the "Cord-Wearer" castes the MA lays down that if a boy under the age of 11 years has intercourse with a girl over 10, the girl has to be outcast *(jāt wāhek rahanu)*, whereas the boy does not incur any consequences.[21] More correctly, the expression is to be rendered by 'to remain outside the caste', the implication being that among the "Cord-Wearers" a woman attains full membership in the caste into which she was born only after her marriage.[22]

5. An Upādhyaya virgin is called *wiṭulo (biṭulo)*, 'defiled', after the first phase of her (normal, *wiwāhitā*) wedding rites, that is to say, even before her marriage has been consummated. Conspicuously, the term *biṭulo* is not used when referring to the wedding rites of other castes.[23] Yet again, if an Upādhyaya man and another Upādhyaya's wife are found lying over one another and their knees touching each other *(ghur khāpi sutnu)*, it is regarded as a consummated intercourse *(karaṇi ṭhaharcha)*. As to the remaining castes, such a case is unambiguously distinguished from a consummated intercourse.[24]

Fig. 8, compiled from the MA,[25] gives a systematic view of the interdependence between feme's status and caste status. The diagram specifies the consequences of an "alleged adultery", that is, if a woman declares herself guilty of adultery, but her offence cannot be evidenced by the ensuing inquiry (!). Such a case is called *mukh patit*, lit. 'mouth' and 'degradation'.[26]

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[19] MA p. 660 § 6.—In fig. 7, case 7, the defilement through *bhāt* between two Rajput probably refers to the non-commensal status groups that exist within the caste of the Rajput.

[20] MA p. 656 § 9. On the Hamāl cf. p. 52.

[21] MA p. 417 § 8. Here there is a remarkable difference to what has been stated in example no. 2. Probably because the boy is still a minor, the girl's deed cannot be "turned into" marriage.

[22] Whereas a man becomes a full member on being invested with the holy cord *(janai)*, mostly at the age of eleven (cf. also Stone 1977: 147 and Bista 1972 a: 121).

[23] MA p. 461ff. § 1.

[24] MA p. 494ff. § 1.

[25] MA p. 500ff. § 4-8.

[26] I revert to the example of *mukh patit*, as the MA does not give a systematic view of the consequences actual adultery entails. It seems to apply to all castes that an actual adulteress is excluded from the *bhāt* commensality with her husband's caste (MA p. 607 § 16). A married woman who puts up with being kissed, embraced or merely touched by somebody other than

Fig. 8. "Alleged adultery" (mukh patit)

husband of the adulteress	alleged adulterer: his status in relation to adulteress	adulteress: her status before the adultery	adulteress: her status after the adultery	consequences for the children born in wedlock, but after the adultery
1. "Cord-Wearer"	higher/equal/lower ("Water-Acceptable")	Brahmin	degraded to "Non-enslavable śudra"	remain "Cord-Wearers", but can be excluded from bhāt commensality if so wished by caste members + share of inheritance reduced to 1/5 of the normal share
		from Rajput to "Non-enslavable Alcohol-Drinker"	degraded to "Enslavable Alcohol-Drinker"	
		"Enslavable Alcohol-Drinker"	enslaved	
2. "Non-enslavable Alcohol-Drinker"	ditto	equal to, or lower than, husband	excluded from bhāt commensality if so wished by caste	share of inheritance reduced, but no degradation
			not excluded from bhāt commensality	share of inheritance normal, no degradation
3. "Enslavable Alcohol-Drinker"	ditto	ditto	no degradation	share of inheritance normal, no degradation
4. "Water-Acceptable"	"Water-Unacceptable" incl. Untouchable	Brahmin	degraded to śudra	no degradation mentioned, share of inheritance reduced
		from Rajput to "Non-enslavable Alcohol-Drinker"	degraded to "Enslavable Alcohol-Drinker"	
		"Enslavable Alcohol-Drinker"	enslaved	
5. "Water-Unacceptable" incl. Untouchable	"Water-Acceptable"	equal to, or lower than, husband	enslaved	no degradation and normal share of inheritance
	equal to adulteress		excluded from bhāt commensality if so wished by caste	
	lower than adulteress			

As can be inferred from fig. 8, the consequences to be expected by the woman and her children result from a combination of three factors: her husband's caste, the caste of the alleged adulterer and her own caste.

Let us first consider the consequences for the adulteress: Apart from case 3, in which both husband and wife are "Enslavable Alcohol-Drinkers", a degradation is inevitable (cases 1 and 4) or at least possible (cases 2 and 5). To be more precise, degradation can mean either outcasting or, at least, exclusion from the commensality with her own caste or with the husband's caste (cases 2 and 5). In all five cases, the consequences imply an additional degradation in the feme's status as the husband is free to repudiate his adulterous wife. Even if he keeps her, she is no longer regarded as *wiwāhitā*, but only as "kept" (*rākheko*). Finally, enslavement, too, implies a particular kind of degradation.[27]

As to the consequences for the children, only those children are dealt with here who were begotten by the husband and born after the alleged adultery. Except for case 1, the children's caste status is far less affected than that of their mother. It seems that a reduction of their share of inheritance is taken into consideration only if their mother is degraded; an exception is, however, case 5.[28]

Fig. 9 shows the consequences brought about by attempted adultery implying bodily contact, such as kissing, embracing, etc.[29] "Cord-Wearers" are obviously the most affected castes (cases 1-3): the mother will be excluded from the *bhāt* commensality in any case and her children's share of inheritance will be reduced. It appears that women of the intermediate caste group of the hierarchy (case 5) are least concerned, whereas at the bottom the misconduct of a woman of the impure "Water-Unacceptable" castes does not wholly exclude a degradation, even if the seducer is higher-ranking than her (cases 6 and 7).

Fig. 10 shows the consequences the children have to expect if their mother had committed premarital or extramarital intercourse and this is revealed only later. Obviously, even premarital intercourse is regarded as adultery if it was concealed on her marriage, and this is in accordance with what has been said on feme's status above. In the passage of the MA drawn upon only the case of a "Cord-Wearer" woman is mentioned.[30]

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the husband can be degraded as well. Even the mere suspicion of faithlessness, such as her unexcused absence from home, entitles the husband to refuse *bhāt* offered by his wife (MA p. 482ff.; p. 474 § 1).

[27] On the legal status of slaves cf. pp. 97ff. Juridically a *wesyā* is sometimes equated to a slave. The insultor of a female is fined with Rs 20 if the woman is *kanyā* or *widhwā*; but if she is a *wesyā* or a slave, the fine amounts to Rs 2 only (MA p. 260f. § 3-4, 15-16).

[28] This in accordance with the principle maintained in some sources of the classical Indian law which disqualifies heirs, such as sinners, persons bodily or mentally disabled and the progeny of an unlawful union (cf. Kane 1946: 608-619ff.; Manu Saṁhitā 1909: 329ff.).

[29] MA p. 482ff. § 4-8.

[30] MA p. 119 § 26.

Fig. 9. "Attempted adultery"

seducer's status in relation to woman	woman's status prior to the incident	consequences for the woman	consequences for the children born in wedlock, but after the incident	
			status	share of inheritance
1. "Cord-Wearer" higher than woman	"Cord-Wearer"	excluded from bhāt commensality	no degradation	slightly reduced
2. "Cord-Wearer" equal to woman	"Cord-Wearer"	excluded from bhāt commensality	no degradation	reduced
3. "Non-enslavable" and"Enslavable Alcohol-Drinker" lower than woman	"Cord-Wearer"	excluded from bhāt commensality	no degradation	considerably reduced
4. "Cord-Wearer", "Non-enslavable"and "Enslavable Alcohol-Drinker" higher/equal/lower	"Non-enslavable Alcohol-Drinker"	excluded from bhāt commensality if wished by caste members	probably no degradation (not specified)	reduced
		not excluded		normal
5. ditto	"Enslavable Alcohol-Drinker"	fine of Rs 5 (only)	probably no degradation (not specified)	normal
6. "Water-Acceptable" higher	"Water-Unacceptable" incl. Untouchable	fine of Rs 2 and excluded from bhāt commensality if wished by caste members	probably no degradation (not specified)	normal
7. "Water-Unacceptable" equal/lower	"Water-Unacceptable" incl. Untouchable	fine of Rs 5 and excluded from bhāt commensality if so wished by caste members	probably no degradation (not specified)	normal

Fig. 10. Adultery

adulteress	adulterer: in status equal to, or lower than, adulteress	consequences for the adulteress's children begotten by the husband, but born after the incident
"Cord-Wearer"	"Cord-Wearer"	remain "Cord-Wearers"
	"Non-enslavable" and "Enslavable Alcohol-Drinker"	slight degradation: remain "Cord-Wearers", but are excluded from bhāt commensality with father's caste members
	"Water-Unacceptable", incl. Untouchable	degradation to status of adulterer (along with their mother), disinherited, but they may stay on in their father's house as servants

Feme's status and caste status: divorce

The different legal statuses of man and woman arise from the specific feme's status as well as from the fact that adultery counts as a separate factual finding only for the woman. Faithlessness towards the conjugal partner bears no consequences upon the husband, provided that the universal rules referring to sexual intercourse have been respected (see p. 35). He, the husband, is called to account only as an intruder, but not as an adulterer.

Principally, the following rules hold good: a) The adulteress belongs to her seducer *(jār)*, that is, she is repudiated; and the seducer is liable to make a payment to the husband. In certain cases the husband is entitled to kill the seducer instead of claiming a payment. b) Provided he renounces the payment, the husband can keep the adulteress as his "concubine" *(rākheko swāsni)*.

The payment in question is called *wihā kharc* or *jāri kharc*, 'marriage expense' or 'divorce expense' respectively, henceforth "divorce payment". The amount of this payment depends on the adulteress's caste as well as on her feme's status. For a woman who was married as a virgin *(kaninyā)*, the MA[31] lays down the following gradation:

"Cord–Wearer"	Rs 100
"Non-enslavable Alcohol-Drinker"	Rs 60
"Enslavable Alcohol-Drinker"	Rs 20
"Water-Unacceptable"	Rs 15

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[31] MA p. 468ff.

The divorce payment is meant as a compensation and is not to be confused with a fine *(daṇḍ)*, which the seducer will have to pay to the authorities and not to the husband. Fig. 11 shows that the amount of the divorce payment depends only on the woman's caste, whereas the amount of the fine results from the status disparity between her and her seducer. This fig. 11 deals with the consequences of a "premarital adultery", that is, when a woman concealed her premarital intercourse and was married as a virgo intacta. Characteristically, the MA subsumes such offences under the heading *wihā nahudai aghi wigranyā*, 'to be spoilt prior to marriage'.[32] The gravity of the false pretence becomes evident if we recall that the feme's status not only determines the kind of marriage and the status of the offspring but also the whole behaviour of the couple's fellow caste members with regard to commensality and life cycle rituals, etc.[33]

If we compare cases 1 and 3 to case 4, we see that an Upādhyaya "adulterer" must pay Rs 100+100 = 200, if the woman is an Upādhyaya herself. He pays, however, only Rs 60+20 = 80, if the woman belongs to the caste group "Non-enslavable Alcohol-Drinker". After all, a man in case 4 pays more, namely Rs 60+60 = 120, if both he and she are "Non-enslavable Alcohol-Drinkers". Here again one is tempted to interpret the gradation of the amounts as a reflection of a decline in caste-specific purity and to postulate that in case 3, for instance, the gravity of offence is leniated by the woman's proportionately small degree of purity...

Fig. 11. "Premarital adultery"

"adulterer"	"adulteress"	divorce payment	fine
1. Upādhyaya Brahmin	Upādhyaya Brahmin	Rs 100	Rs 100
2. Upādhyaya/Rajput/Jaisi	Rajput/Jaisi/Chetri	Rs 100	Rs 30
3. Upādhyaya Brahmin	"Non-enslavable Alcohol-Drinker"	Rs 60	Rs 20
4. "Non-enslavable Alcohol-Drinker"	"Non-enslavable Alcohol-Drinker"	Rs 60	Rs 60
5. "Cord-Wearer" and "Non-enslavable Alcohol-Drinker"	"Enslavable Alcohol-Drinker"	Rs 20	Rs 10
6. "Enslavable Alcohol-Drinker"	"Enslavable Alcohol-Drinker"	Rs 20	Rs 10
7. "Water-Unacceptable"	"Water-Unacceptable"	Rs 15	Rs 15

As has already been mentioned, in specific cases a husband has the right to kill his wife's seducer *(jār hānnu)*. Among the two highest caste groups of the hierarchy, killing can be replaced by degradation. If, for example, husband and seducer are Brahmins, the latter is deprived of his holy cord and thus of his status as "Cord-Wearer" as well. The seducer's head is shaved *(muḍnu)*, and he is compelled to eat pork and drink alcohol.[34]

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[32] MA p. 468ff. In modern spelling: *bihā nahũdai aghi bigrane*. The term "premarital adultery" is a contradictio in adjecto from our Western viewpoint. It illustrates, however, that false pretence of a feme's status is as grave as actual adultery, as the kind of marriage and the status of the offspring depend on the feme's status of the spouse.

[33] On funeral rites cf. pp. 61-66.

The custom of killing the adulterer *(jār hānnu* or *jār kāṭnu)* is regulated as follows: The husband is free to kill the adulterer/seducer of his wife

— if he, the husband, belongs to a caste which has practised such killings from times immemorial on the basis of customary law;

— if he, the husband, is not a slave at the time when the adultery is committed;

— if his wife is not yet deemed *wesyā (besyā)*;

— if the adulterer is neither a Brahmin (Upādhyaya and Jaisi), since Brahmins must not be killed, nor an ascetic, Sannyāsi, who claims descent from Brahmins; and

— if the adulterer is not a close consanguine relative of the adulteress (because this is incest, regarded as a criminal act in its own right).

— Finally, a husband of one of the impure "Water-Unacceptable" castes may not kill an adulterer who belongs to one of the pure "Water-Acceptable" castes.[35]

With the aforesaid reservations, the killing can be practised by members of all caste groups, by a Brahmin as well as by an Untouchable. From the later edition of the MA,[36] too, it clearly emerges that, though with some restrictions, even certain impure castes were allowed to indulge in this custom. By contrast, Hodgson states that, according to the legislation prior to Jaṅg Bahādur's Muluki Ain, the killing of the adulterer was only practised by the higher Parbatiya castes, that is to say, by the "Cord-Wearers" and "Non-enslavable Alcohol-Drinkers" in the MA's classification. Hodgson also mentions that within these castes it was customary for the husband to cut the adulterous wife's nose off.[37] As to the modern legislation of Nepal, killing is no longer legal, but the adulterer can be imprisoned if the husband so desires.[38]

Hypergamy and status allocation

As has already been mentioned, the MA forbids hypogamous unions and any sexual relations with a higher-ranking woman. Such a marriage having been contracted under false pretences must either be dissolved or it necessarily entails the woman's degradation to the caste of the husband.[39] Consequently, as the

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[34] MA p. 603 § 2-3; p. 631f § 7.

[35] Cf. MA p. 527ff.; pp. 603-605 § 2-8; p. 624f. § 1-2, 9; p. 629f. § 2-3; p. 636 § 29.

[36] MA 2009, V: p. 96 § 56.

[37] Hodgson 1880, II: 241-243; as to cutting off the nose cf. also MA p. 613 § 2.

[38] Cf. p. 187.

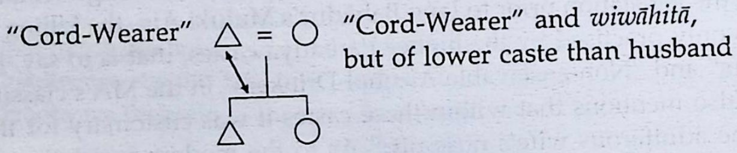
[39] MA p. 452ff. § 32-36.

Upādhyaya Brahmins represent the highest caste, an Upādhyaya virgin is allowed to be married only to a man of the same caste.[40] Let us also note that this general rule is somewhat contradicted by empirical reality.[41]

Hypergamy, however, that is, sexual relations with a lower-ranking woman, is permitted and is also considered a legal form of marriage. A hypergamous union is prohibited only if it implies a transgression of the demarcation lines a) either between pure and impure castes, or b) between touchable and untouchable castes within the category of the impure castes (see p. 35).

Thus it becomes clear that the limits to consexuality are assessed wider than those set to commensality. Marriages can be contracted across the boundaries of *bhāt* acceptance; and as to the untouchable castes, intermarriage is even possible across the boundaries of water acceptance, as these castes accept water only unilaterally among themselves. The feme's status also intervenes as an additional factor: a husband belonging to the caste groups "Cord-Wearer" and "Non-enslavable Alcohol-Drinker" must decline accepting *bhāt* from his spouse if she is classified as *wesyā*, just as if she were of a caste ranking lower than his.[42]

The prohibition on accepting *bhāt* prevailing between the spouses can, in some cases, be transferred to the offspring. In the case of a marriage between "Cord-Wearers" of different castes, the father is entitled to refuse to live in commensality with his own children, if his relatives so desire.[43]


"Cord-Wearer"
"Cord-Wearer" and *wiwāhitā*,
but of lower caste than husband

The feme's status and the caste status of the mother can be a co-determinant factor for the status allocation of her children. Referring to all castes, the MA[44] prescribes the following: A *wiwāhitā* woman who has committed adultery during her pregnancy, is, together with the issue of this pregnancy, to be degraded to her seducer's status. The children will be called "children of a whore", *wesyā putra*, because, although legally begotten by their father, they are spoilt just "as one drop of alcohol is sufficient to spoil a pot filled with milk" (*jastai dudkā ghaḍāmā madīrāko ek thopo parnāle sawai bigrimcha*).

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[40] MA p. 445f. § 9.

[41] In a sample of 17 inter-caste unions in a village of Central Nepal 6 were hypogamous (Stone 1977:119). Bista (1972 a: 24) reports on an exceptional case; according to him, Chetri were formerly allowed to marry Brahmin women. Matrimonial alliances between Rāṇā men (Chetri) and Ṭhakuri women are another irregularity (Fürer-Haimendorf 1960: 19f.). On sporadical hypogamous unions in Western Nepal cf. Caplan 1974: 54.

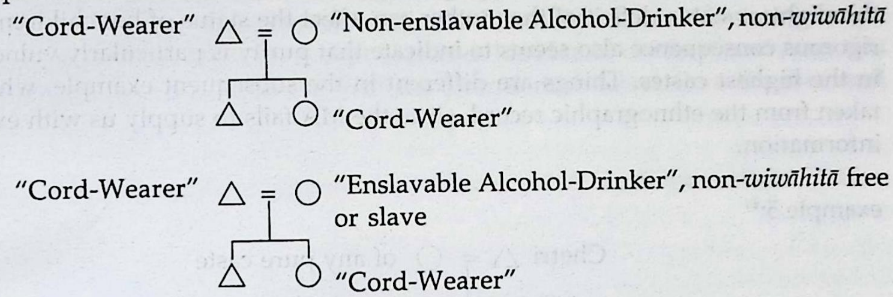
[42] Cf. above pp. 41-43.

[43] MA p. 116 § 8-11.

[44] MA p. 573 § 6.

The mother's co-determinant role is also documented by the following examples:

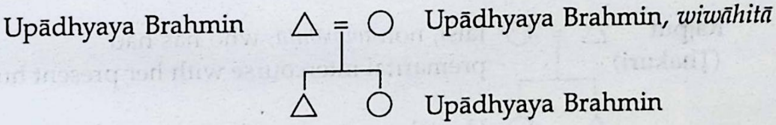
example 1: allocation of "Cord-Wearer" status[45]


"Cord-Wearer"
"Non-enslavable Alcohol-Drinker", non-*wiwāhitā*
"Cord-Wearer"
"Cord-Wearer"
"Enslavable Alcohol-Drinker", non-*wiwāhitā* free or slave
"Cord-Wearer"

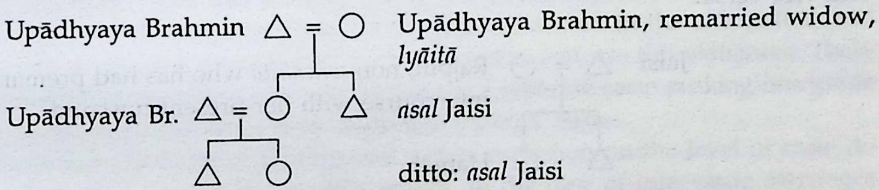
The father's "status quality" is predominant, and the children remain "Cord-Wearers" even if their mother is two whole caste groups lower than the father.

With reference to individual castes, the following examples merit our attention:

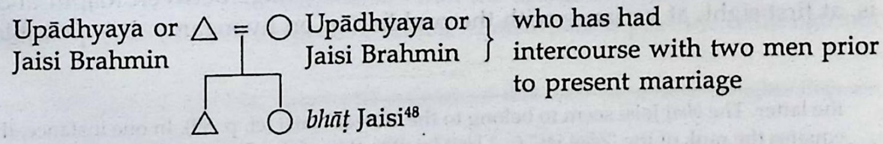
example 2:


Upādhyaya Brahmin
Upādhyaya Brahmin, *wiwāhitā*
Upādhyaya Brahmin

example 3:[46]


Upādhyaya Brahmin
Upādhyaya Brahmin, remarried widow, *lyāitā*
Upādhyaya Br.
asal Jaisi
ditto: *asal* Jaisi

example 4:[47]


Upādhyaya or Jaisi Brahmin
Upādhyaya or Jaisi Brahmin
who has had intercourse with two men prior to present marriage
bhāṭ Jaisi[48]

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[45] MA p. 423 § 2-4.

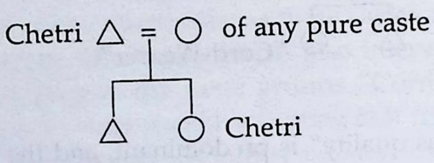
[46] MA p. 654 § 7, p. 537 § 2.

[47] MA p. 537 § 4.

[48] Although the *asal* Jaisi are, as already mentioned, called in the MA Brahmins (*wrāhmaṇ*), they rank below the Upādhyaya Brahmins and are not entitled to perform the priestly functions of

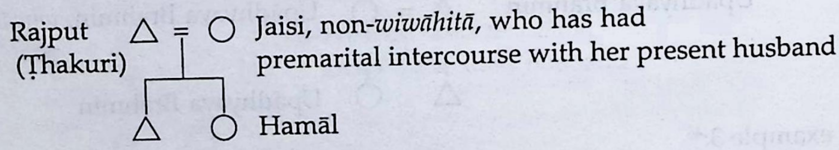
The congruency between feme's status and caste status is noteworthy: a woman born as Upādhyaya, who has already cohabitated with two men, declines so much in her feme's status that she is free to contract a union with a Jaisi—a union which is otherwise considered hypogamous. As the examples 2 to 4 show, even the slightest status deficit of the mother can affect the status of her children. This rigorous consequence also seems to indicate that purity is particularly vulnerable in the highest castes. Things are different in the subsequent example, which is taken from the ethnographic record, since the MA fails to supply us with explicit information.

example 5:[49]

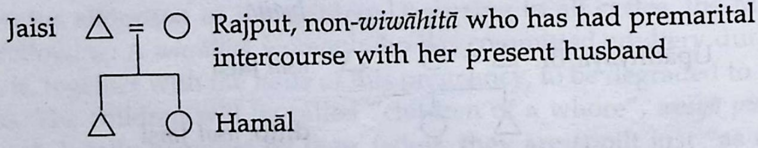

Chetri △ = ○ of any pure caste
△ ○ Chetri

Here, the father's status is transferred to the children, although their mother may be of the lowest caste of the category "Water-Acceptable".[50]

example 6:[51]


Rajput (Ṭhakuri) △ = ○ Jaisi, non-*wiwāhitā*, who has had premarital intercourse with her present husband
△ ○ Hamāl

and vice versa:


Jaisi △ = ○ Rajput, non-*wiwāhitā* who has had premarital intercourse with her present husband
△ ○ Hamāl

This represents an exceptional case as intermarriage between Rajput and Jaisi is, at first sight, at variance with the prohibition on hypogamy. It is possible that

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the latter. The *bhāṭ* Jaisi seem to belong to the "lower" Jaisi (cf. p. 89). In one instance, the MA equates the rank of the "*bhāṭ jāt*" (= ? *bhāṭ* Jaisi) to that of the Chetri (MA p. 660 § 7). The word *bhāṭ* means also 'singer', 'bard', and denotes the offspring of an Upādhyaya or Jaisi man and a woman of one of the ascetic sects (cf. Śarmā 2019: 786).

[49] Bista 1972a: 27-30.

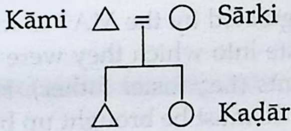
[50] On caste-internal status groups of the Chetri cf. p. 148.

[51] MA p. 659 § 9.

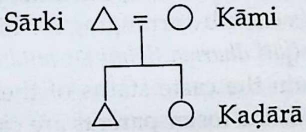
the MA regards both castes as equal-ranking, just as is reported by Stone[52] in her monograph on a village in Central Nepal. On the one hand, the MA denotes the *asal* Jaisi as Brahmins, but on the other, in its caste lists they normally figure below the Rajput as if they ranked lower than the latter. There is no indication, either, of the position assigned to the Hamāl within the hierarchy. As already mentioned, a Rajput or Jaisi father does not accept *bhāt* from his Hamāl children, and from this circumstance one may conclude that the Hamāl rank lower than the Jaisi and Rajput.[53]

There is a similar case with two untouchable castes, the Kāmi and the Sārki.

example 7:[54]



and vice versa:



Kāmi and Sārki reciprocally intermarry, but they do not take *bhāt* and water from each other. Does this instance prove the virtual equality of their caste statuses? The informants I questioned in the field answered in the affirmative, and the context of the MA passage just quoted seems to endorse this statement. There is no doubt that the MA classes the Kaḍārā as a separate caste ranking one grade lower in the hierarchy than their respective parents' castes.

Filiation on the level of kinship and status ascription on the level of caste do not necessarily run parallel. In other words, in the case of inter-caste marriages children can be integrated into the kin group, but not automatically into the caste, of their father. Thus the MA emphasises that the aforementioned Hamāl children belong to the *gotra* of their respective father.[55] Patrifiliation prevails, although not without exceptions. Doherty[56] reports that the descendants of an illegal union between a Brahmin and an untouchable woman are integrated into their mother's descent group. (This implies, in accordance with the MA's regulations, an integration into the mother's caste as well.) A similar case of matrifiliation can be inferred from the passage of the MA[57] referring to the "children of a whore": it is laid down that the birth rites of the children have to be performed by the degraded mother and not, as is usual, by their father.

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[52] Stone 1977: 104-106. My Jaisi informants maintained that their caste ranked higher than the Ṭhakuri.

[53] According to Fürer-Haimendorf (1971: 10ff.), Ṭhakuri (Rajput), Jaisi and Hamāl are "of equal rank", but a few pages later (p. 13ff.) he mentions the existence of two non-commensal status groups within the Ṭhakuri caste. Stone (1977: 104ff.) lists the Hamāl as a separate caste.

[54] MA pp. 678-679 § 6-7.

[55] The *gotra* is an exogamous group with mythical descent, not necessarily congruent with real descent groups *(thar, kul)*. Cf. Stone 1977: 129ff., 143ff. and Bista 1972 a: 38f.

To sum up, the filiation is a patrifiliation, and the allocation of the caste status of the children is primarily determined by the father, and secondarily also by the mother. While children belong to their father's descent group, they do not necessarily attain the latter's caste status. This principal rule is reversed if one of the parents has been exposed to an "extraordinary" defilement, say, by transgressing the demarcation line between pure and impure castes.

The same principles apply to adoption, regulated by the MA[58] as follows:

a) Children can be adopted even if the caste into which they were born ranks higher or lower than that of the foster parents (i.e., foster father). However, if one adopts a child born into an impure caste, he must be brought up by members of the same impure caste *(mildā jātlāī pālna dinu)*; and if the birth caste of the child adopted *(dharmaputra)* ranks higher than the foster parents', the latter are obliged to maintain the specific customs of the child's caste by arranging for his/her marriage with a person of the same caste status *(jāti dharma thāmi jāt mildāsaṁga wihā garidinu)*.[59] That is to say, such children retain the caste status of their genitors. Children whose birth caste is inferior to that of the foster parents are called Khatri and receive a reduced share of inheritance.

b) If the genitor's caste is unknown, the adoptee may be integrated into the foster parents' caste, with one exception: If Brahmins (also Jaisi?) adopt such a child, the adoptee is called Khatri (and not Brahmin).

The MA fails to indicate whether the name Khatri stands for a particular caste status or not. According to our ethnographic sources, the Khatri are put on a par with the Chetri and are the offspring of the following unions:[60]

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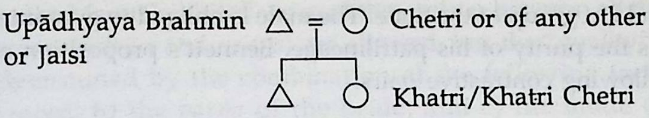
[56] Doherty 1974: 28.

[57] Cf. p. 50.

[58] MA p. 121f. § 29-30.

[59] The adjective *mildā* may also mean here 'suitable', 'proper', as hypergamous unions are permitted.

[60] Fürer-Haimendorf 1966: 31f.; Bista 1972 a: 27ff. Stone (1977: 115ff.) lists the Khatri as a subdivision of the Chetri caste.



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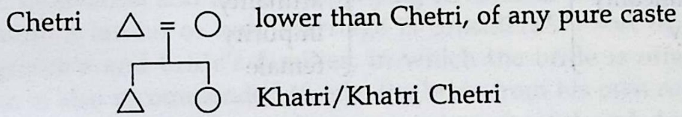

Etymology also supports the assumption that Khatri and Chetri are identical, as both terms derive from *kṣatri/kṣatriya*.

Excursus: ideological foundations of the feme's status

Why is a woman's purity more vulnerable than a man's and what are the bases of the particular dimension of the feme's status?

The decline in the feme's status with the increasing number of lovers and/or husbands, and the prohibition of hypogamy were explained by Stevenson[61] who put forward the thesis of "internal pollution". According to him, intercourse is more defiling for the female, as it is she who imbibes the male's secretion, which is considered sui generis impure. Certainly, the MA's diction assigns a rather passive, receptive role to the woman. *karaṇi garnu*, 'to make coitus', only refers to a male subject, whereas a woman can only *karaṇi garāunu* or *karaṇi dinu*, lit. 'let make coitus' or 'give coitus' respectively.[62] The feme's status is assessed by stating "how many penises a woman has had", (f i., *dui/tin ... liṅga bhaeko swāsni*). In spite of such idiomatic reminiscences, Stevenson's approach is too atomistic to do justice to the complex implications of the problem.

Bennett[63] was one of the first to enter into a discussion of the structural and ideological context. In a brilliantly presented paper she points out the fundamental antagonism that exists between the Brahmanic ideal of asceticism and the necessity of reproduction. A man's life begins and ends in a phase of asceticism, when he is *brahmacārin* and *vānaprastha* respectively; the setting up of a household *(gṛhastha)* is just a transitory phase between the first two ones.[64]

This orientation of the male, his striving after purity, is constantly jeopardised by the female as an object of lust and the source of impurity per se (menstruation, delivery, etc, cf. pp. 60-61). However, the female is indispensable for the continuation of the patrilineal kin group of the male. The male is obliged to guarantee this continuity as well as the purity of his patrilineage. Bennett's proposition can be condensed to the following contrastive pairs:

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[61] Stevenson 1954: 56ff.

[62] Cf., among others, MA p. 671 § 3-7

[63] Bennett 1976.

[64] Cf. p. 105ff.

$$\left.\begin{array}{l}\text{asceticism}\\ \text{patrilineality}\\ \text{purity}\\ \text{male}\end{array}\right\}\longleftarrow \qquad \longrightarrow\left\{\begin{array}{l}\text{family life}\\ \text{affinality}\\ \text{impurity}\\ \text{female}\end{array}\right.$$

Extending Bennett's approach, we may stress that the role of the woman is charged with ambivalence and that it is this ambivalence which primarily conditions the feme's status. Even if the woman is a source of impurity, she is also the implement of reproduction for the kin group. Guaranteeing the continuity of this group is tantamount to guaranteeing its purity. The different degrees of the feme's status, from virgin down to whore, are nothing other than parameters of those additional impurities resulting from incidents in the life of an individual woman, which aggravate her sex-specific, "innate" impurity.

The constant purity deficit of the woman vis-à-vis the man is one of the reasons for the fact that, within a patrilineal kinship system, the status allocation of the offspring cannot be determined by the father alone. Apparently, the preference for hypergamy and the ban on hypogamy are also connected with this purity deficit. Hypogamy would practically imply a reversal of the aforementioned assignment of sex roles, as it is incompatible with the patrilineality principle and with the male's striving after preservation or even increment of his purity. In fact, an alliance between a status-inferior man as the lineally stressed parent, on the one hand, and a status-superior woman, on the other, would imply a loss of purity (and status) for the offspring.

As to hypergamy, matters are different. Several authors have emphasised the significance hypergamy has in India, especially in the North, pointing out that it meant more than only intermarriage between persons of different castes. In a recent study,[65] the author concludes that "hypergamy should really be thought of as a tendency rather than a structural type, and [that] its significance can be understood only in the context of caste". The hypergamous tendency, or rather idea, implies that the wife-giving group (caste, subcaste, family) is, in principle, lower-ranking than the wife-taking group of the bridegroom. By Pocock's distinction[66] between status (caste status) and standing (status of a division within a single caste) it can be shown that the wife-givers' status deficit exists regardless of whether the woman is married into a higher caste (hypergamy) or into her own (isogamy).

The distinction between *wiwāhitā* and non-*wiwāhitā* marriages in the MA is in principle in accordance with the rules as given by the classical sources of Indian law. In the Manu Saṁhitā[67] we read that unions between all three twice-born *varṇa* (*brāhmaṇa*, *kṣatriya* and *vaiśya*) are allowed, but the "quality" of them is different and determined by the combination of the following factors: a) the *varṇa* of the groom, b) the *varṇa* of the bride, and c) the mode of wedding. As the context suggests, the modes of wedding are ranked hierarchically according to the motivation and the accompanying ceremonies and prestations. Thus, for a Brahmin, a lawful or holy marriage is considered a sort of contract between the groom's and bride's families, in which the bride is offered as a gift; the groom is also recommended to take the bride from his own *varṇa*. By contrast, a Brahmin's union with a *śūdra* woman is unlawful and degrading not only because of the low rank of the latter, but also because such a union is declared to be dictated by sexual desire and passion. For a *kṣatriya*, yet again, a lawful mode of wedding does not exclude passion, such as mutual love or even violence (rape), at all.

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[65] Das 1973: 137.

[66] Pocock 1972: 52-69.

The concept of the so-called *kanyā dān* is not only an expression of the hypergamous tendency, but it also seems to be an element of Bennett's "patrilineal ideology". The term itself indicates "the gift of a virgin" plus a dowry. The *kanyā dān* is, at the same time, an obligation and an act by which the bride's father acquires religious merit *(punya)*; it is he who helps to ensure the continuity of the groom's descent group. As empirical experience teaches, the *kanyā dān* also implies the recognition of the status superiority of the bridegroom's group regardless of whether this group belongs to the same or to a higher-ranking caste or subcaste. Even isogamy exhibits a hypergamous tendency. The status superiority of the wife-takers lies apparently in their role dominance in terms of filiation, as described above.[68]

Incest

The penal consequences of incest vary with the gravity of the offence: Incest can be punished by the death penalty, life-imprisonment, enslavement, degradation or by fining. (In the case of a Brahmin offender, capital punishment is to be replaced by life-imprisonment and degradation.) Here, too, we have to distinguish between two types of degradation: exclusion from the *bhāt* commensality and outcasting *(patit)*. Outcasting as a legal sanction in the case of incest means degradation to the next lower caste group. For example, a "Cord-Wearer" becomes a "Non-enslavable Alcohol-Drinker", whereas a "Non-enslavable Alcohol-Drinker" is degraded to an "Enslavable Alcohol-Drinker". However, should the offender belong to the "Enslavable Alcohol-Drinkers" or to one of the impure castes, he is enslaved, instead of being integrated into a lower caste.[69]

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[67] Manu Saṁhitā 1909: 83ff.

[68] On *kanyā dān* in a Nepalese context cf. also Stone 1977: 143ff.

[69] Cf. below note 71.

The dominant criterion for the gravity of the act is the degree of kinship. Caste status[70] and feme's status are further factors. In spite of the same degree of relationship, incest can entail more lenient consequences if the woman is a) of a lower caste than the man, or b) if she has suffered a decline in her feme's status. At least in the two highest caste groups, the feme's status is important and comes into effect especially if the female party is a remote consanguineal or an affinal relative. This can be illustrated as follows:

Incest with one's own mother is punished by the death penalty (or life-imprisonment and degradation in the case of a Brahmin offender), irrespective of her feme's status. Incest with one's mother-in-law, by contrast, entails degradation or only a fine, depending on her feme's status. Thus the decisive question is whether her marriage to her seducer's father-in-law has been her first, second, etc, marriage. The caste factor makes itself felt in two ways: Firstly, the legislator takes into account the fact that the kinship structure may differ from caste to caste; for instance, it is explicitly laid down by the MA, for which castes the practice of levirate is to be considered an incestuous union and for which castes it is not.[71] Secondly, the rules of *bhāt* acceptance are, of course, effective in the case of incest, too, and their application is closely connected with the feme's status. As we already know, a "Cord-Wearer" man must not accept *bhāt* from a woman classed as *wesyā*; if he has committed incest with a *wesyā* and accepted *bhāt* from her, the latter fact will be regarded as an aggravating circumstance.[72]

From this brief discussion we can conclude that incest primarily means produced impurity, produced by an act deemed sinful and punishable. This produced impurity can be further intensified by an additional transferred impurity (pollution, "contagion" by contacting other, less pure persons), as in the case of *bhāt* acceptance. That incest produces impurity can be proved by the fact that it entails degradation.[73]

For a "Cord-Wearer", incest can have as grave consequences as intercourse with an untouchable woman. He himself can transfer the impurity contracted by the offence to others even before he is convicted of the act and degraded. If he has had intercourse with an Untouchable or incestuous relations with an equal-ranking woman and if he thereupon sleeps with his wife and/or gives *bhāt* to her, the children born hereafter will be degraded to "non-enslavable *śudra*".[74] We see that the impurity contracted by sexual intercourse can be transferred either through sexual intercourse or through *bhāt*/water to others. This also applies vice versa: A man who contracts impurity by accepting *bhāt*/water can transfer his defilement to his wife by having intercourse with her after his offence. He can thus cause her being degraded to the same caste by which he, the husband, has been defiled.[75]

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[70] In consequence of hypergamous marriages, persons belonging to different castes can become related to each other.

[71] Cf. MA p. 530 § 12-13, p. 535 § 15-16, p. 541f. § 17-18, p. 546 § 16-17. On incest in the classical sources of Indian law cf. Kane 1953: 103f.

[72] Cf. p. 50.

[73] Cf. pp. 158-161.

[74] Extrapolated from MA p. 383 § 20-23, p. 384 § 21, p. 388f. § 31, p. 396f. § 59. "Non-enslavable *śudra*" is probably identical with "Non-enslavable Alcohol-Drinker".

This example is noteworthy as it shows that impurities deriving from different sources are, at least partly, convertible.

Sodomy

Sodomy, *paśu karaṇi*, offers another proof for the convertibility of impurity. At the same time it illustrates that the conception of the caste hierarchy of the MA embraces even Nature.

According to the MA[76], a "Cord-Wearer" having committed sodomy with a cow will be degraded to a "Non-enslavable Alcohol-Drinker", and a "Non-enslavable Alcohol-Drinker" to an "Enslavable Alcohol-Drinker". The animal involved must be assigned to an Untouchable; and only members of the impure castes may thereafter drink her milk. In sum, the animal is degraded to the status of an Untouchable, as it seems. Similar regulations are laid down with regard to sodomy with sheep, goats and buffaloes. It may be noted that even in the case of such a degradation, the "holy" cow is given some protection: The MA[77] stipulates that the cow can be conveyed to any untouchable caste except the Sārki cobblers, for the latter habitually eat beef (and make use of the skin).

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[75] See note 74 and MA p. 386f. § 28.

[76] MA pp. 692-699. According to the Manu Saṁhitā (1909: 409), it is a sin to ejaculate one's semen anywhere other than into the vulva of a woman.

[77] MA p. 692 § 4.

VI

TEMPORARY-PERSONAL IMPURITY

It has already been mentioned that the Hindu milieu knows two kinds of impurity. One kind is collective and permanent, and as such closely connected with one's affiliation to a caste, caste group or caste category. The other kind of impurity has been labelled temporary and personal since it is independent of caste status (at least apparently). This kind of impurity results from certain actions and events in the lives of individuals, such as birth, death, menstruation, etc, and it can be redeemed by adequate rites immediately or at the end of a certain period. As Mandelbaum[1] writes:

> "Every person must go through a cycle of impairment and restoration both regularly and sporadically. Bodily excretion imposes a daily cycle; other biological facts—of sex, of menstruation, of cutaneous growth, of birth, of death—entail recurrent disability and require periodic restitution. When a person is brushed by the death or birth of a close kinsman, the experience charges him with ritual disability, which must be discharged by the appropriate ritual acts. (...) There are various degrees of both pollution and purity. One's normal state is neither especially pure nor defiled (...), from this mild state [of impurity] a person's ritual condition can be changed in either direction."

The question arises to what extent both kinds of impurity are interconnected. Dumont and Mandelbaum[2] emphasise that there are certain situations in which a Brahmin (having the least collective impurity) can be treated like an Untouchable.

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[1] Mandelbaum 1970, I: 186f.

[2] Dumont 1966: 69-85; Mandelbaum 1970, I: 194.

Dumont even goes so far as to state that temporary and permanent impurities are of identical nature.

In the classical sources of Hindu law all bodily excretions are regarded as polluting: faeces, urine, semen, blood, fat, marrow, nails (cuttings), mucus, sweat, etc. As a rule, a bath is made obligatory after vomiting, defecation, menstruation, urinating and sexual intercourse—and the same is prescribed if somebody has been touched by an untouchable Caṇḍāla.[3] In other contexts, too, the effect of physical contact with members of impure castes is compared with the impurity of a menstruating woman or with the impurity a person possesses while mourning or after a birth has taken place in his family.[4]

The MA gives relatively few details on bodily excretions. We learn that whoever touches a menstruating "Cord-Wearer" woman, becomes pure *(śuddha)* after a bath and after changing his holy cord *(janai pherera śuddha huṁcha)*.[5] Or: whoever takes his meal after defecation without performing the ablution prescribed, defiles himself and all the persons who accept food from him.[6] The oral reception of somebody's semen, saliva, faeces, urine, menstruous blood is polluting and necessitates a bath and an application for absolution.[7]

The MA dwells longest on the temporary impurity resulting from death and birth. As already mentioned, the general term for this kind of impurity is *juṭho;* impurity caused by death is called *āsauc (āśauc)* and that caused by birth *sutak*. The subsequent rules given by the MA seem to apply primarily to the "Cord-Wearer" castes; only passing reference is made to the lower-ranking caste groups. In spite of this deficiency, the governing rules make plain to what extent status-specific impurity and temporary-personal impurity are interrelated.

Both events, death and birth, make a certain category of persons liable to certain avoidances for a certain number of days. The compliance with these avoidance rules is called *sutak wārnu (bārnu)* in the case of childbirth and *āsauc wārnu* in the case of decease.[8]

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[3] Kane 1953: 311-316.

[4] Kane 1953: 268f.; Kane 1974: 169ff. Matters are similar in Kannada, South India. Under normal circumstances not even a low caste person would accept water from a Havik Brahmin who is temporarily polluted by the death of one of his relatives. The impurity of a menstruating Havik woman is more polluting than the impurity of an Untouchable. The Havik say that after the birth of a child the father is as impure as an Untouchable (Harper 1964: 158f., 168).

[5] MA p. 438 § 50.—Changing one's holy cord implies a re-initiation and hence re-admittance into one's caste, as the Manu Saṁhitā (1909: 406) states.

[6] MA p. 416 § 6.

[7] MA pp. 273-285.—As far as I can see, the MA nowhere states the necessity of an ablution after sexual intercourse.

[8] *bārnu*, lit. 'to demarcate', 'to avoid'.

Childbirth

From a "Cord-Wearer" woman in confinement one must not accept water for 20 days nor *bhāt* for 30 days after the delivery. If the woman belongs to another, inferior caste group, both water and *bhāt* are acceptable after 20 days without risk of defiling the receiver.[9] Furthermore, the mother must not be touched for ten days after delivery. If this regulation is infringed because she, the mother, needs medical treatment, the person touching her must perform an ablution and purify himself with the "five products of the cow" *(pañcagawya)*.[10]

However, it is not only the mother who is put into a state of impurity. The new-born child's father, the father's brother, classificatory brothers together with their wives, sons and unmarried daughters are also polluted. For the father and his agnates (related within seven generations) this state of impurity prevails for ten days if the woman in confinement is of the same caste as theirs *(jāt mildā)*. It prevails only for three days if she is *bhāt nacalnyā* ("*bhāt*-unacceptable") for the father and his agnates, that is, if she is of a lower caste or has undergone a decline in her feme's status.[11] A status disparity between the spouses may thus reduce the number of days and, consequently, the degree of impurity.

The MA lays down that the woman in confinement is for two short periods free from impurity. This is the case between the delivery and the severing of the umbilical cord, on the one hand, and on the sixth day *(chaiṭi)* after the delivery, on the other, when a certain ceremony is performed. The "lifting" of impurity is obviously done to render obstetrics and the ritual intervention possible, both implying physical contact with the mother.[12]

Mourning

Impurity primarily emanates from the corpse. A case of death pollutes even those relatives of the bereaved who have neither taken part in the funeral nor lived together with the deceased under one roof.

Furthermore, the corpse is not only a source of impurity; it is itself highly susceptible to impurity. Here lies a key to the interpretation of the rule, according to which the deceased should, if at all possible, be cremated by his fellow caste members. Only in case of need can the corpse of a "Cord-Wearer" be disposed of by a lower caste person, provided that he is not a member of an impure caste ("Water-Unacceptable").[13] If the need arises even a Brahmin is allowed to perform the funeral ceremony of an Untouchable; afterwards he has to purify himself by a relatively simple ceremony.[14] The MA adds that whoever acts out of sheer piety, acquires a degree of merit equivalent to that gained by performing a great sacrificial rite.[15]

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[9] MA p. 432 § 15.

[10] MA p. 432 § 13. The purification is imposed at least on the "Cord-Wearer" castes. The five products are the milk, sour milk, clarified butter, urine and dung of the cow.

[11] MA p. 432 § 14.

[12] MA p. 432 § 16.

[13] MA p. 437 § 21. p. 426 § 1.

The bereaved must abstain from specific dishes. Conspicuously, these tabooed kinds of food are mostly identical with those normally associated with low caste status, such as alcohol, fish, meat, millet pap *(kodoko bhāt)* and black pulses *(māsko dāl)*.[16] Allowed is the consumption of dishes which, according to the vegetarian Brahmanical ideal, connote a higher status because they may under normal circumstances be partaken of by the highest castes: *bhāt* (of rice), clarified butter, milk, milk products, vegetables, etc.[17]

The impurity emanating directly or indirectly from the deceased himself becomes manifest by the fact that outsiders are not entitled to accept food and other things which have been touched by those having lived with the deceased under one roof. The impurity the relatives of the deceased are automatically affected by, whether they have touched the corpse or not, can be transferred to persons who do not belong to the group of the mourners.[18] Furthermore, death is obviously more polluting than childbirth because in the first case the prohibition of acceptance is extended to all edible substances, including even spices, whereas in the latter only *bhāt* and water should not be accepted from the mother and her relatives.[19]

Another important point is that the impurity of the bereaved decreases in the course of time. For example: X has already spent three days of his ten days' mourning period; now if Y, who does not belong to the mourners, accepts cooked food *(pāk)* from X on that third day, he will remain polluted for the same number of days X still has to mourn, that is, for 10 minus 3 = 7 days.[20] If, at the end of the mourning period the indispensable purification is performed, the impurity to be overcome has actually been reduced to a certain degree.[21]

The intensity of impurity differs individually. This can be inferred from the number of days to be observed by different categories of the deceased person's relatives. The number of mourning days usually varies between 10–3–1–0, and this is primarily determined by factors, such as a) degree of relationship, b) caste, c) "personal status", and d) time.[22]

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[14] MA p. 426 § 32.

[15] The passage reads: *dharma nimitta murdā [...] polnyā maṭṭi dinyāharulāi ṭhulo jagya [yajña] garyāko phal milcha*, that is, 'whoever cremates [or] buries the corpse for the sake of religious merit, is entitled to the fruits of a great sacrifice', MA p. 435 § 32.—The piety is meritorious since the deceased would become a ghost if not provided with the adequate funeral rites. In popular belief, any defilement of the corpse by contact with a low-caste person, with an animal regarded as impure, etc, has a negative effect on the posthumous fate, cf. Höfer and Shrestha 1973.

[16] Cf. pp. 201-202.

[17] MA p. 440 § 61-62.

[18] MA p. 439f. § 56-57.

[19] In detail: all sorts of cooked food *(pāk)*, salt, oil, clarified butter, honey, cane-sugar, treacle, meat, fruits, herbs, medicines, wooden vessels, leaves (for leaf-cups?), clay, sour milk, milk, dried skins, raw grain, metal, water (even if untouched), cloth, cattle *(caupāyā)*, raw tobacco, tobacco for the hookah *(tamākhu)*, spices, MA p. 439f. § 56-57.

[20] MA p. 439 § 56.

[21] Similarly in Dumont 1966: 70ff.

a) Relationship: Here relations are decisive, such as the parent-children relation (full children versus adopted ones); the collateral distance between the agnates, computed on the basis of the number of generations separating them from the common ancestor in the patriline; or the fact whether the women among the mourners are consanguineal or affinal relatives.[23]

b) Caste status: Relevant are possible status disparities between the deceased and his surviving relatives, particularly in the case of inter-caste marriages and their issues.

c) "Personal status": By this I mean the age of the deceased (child versus adult), social rank (king versus commonalty), social standing (slaves versus freemen, ascetics versus laymen) and feme's status in the case of a woman.

d) Time: The number of mourning days can be reduced in certain specific cases, for instance, if the news of the relative's death did not reach the bereaved soon enough, or if during the mourning period a second relative happens to die.

As will be shown in the subsequent examples,[24] all the four factors (a-d) are interdependent.

If a man of the caste group of the "Cord-Wearers" dies after being invested with the holy cord, the following numbers of days are prescribed:

— 10 days for his *bhāi*, that is for his agnates (and their wives) within seven generations;[25]
— 3 days for his *bhāi* within 8 to 13 generations;
— 3 days, likewise, for those relatives who do not belong (by birth) or who no longer belong (by exogamy) to the patrilineal group of the deceased, namely his married daughter, married daughter's daughter, married sister, married sister's son, his mother's sister, mother's brother and his parents-in-law;
— 1 day only for his *bhāi* within a range of 14 to 21 generations.[26]

However, if the *bhāi* are not informed of their relative's death until ten days after he has died, they have to observe fewer days, namely:

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[22] On the basically analogous principles in India cf., i.a., Dumont 1966: 70ff.; Kane 1953: 267ff.; and Harper 1964: 161ff. on the mourning customs of the Havik Brahmins in South India.

[23] This is so because, at least among the "Cord-Wearers", a married woman is considered to belong to the patrilineal descent group of her husband. On kinship among Brahmins and Chetri in general cf., i.a., Doherty 1974; Bista 1972 a: 38-48; Fürer-Haimendorf 1966. As Stone (1977: 136f.) states, the unit of worship and mourning among the "Cord-Wearers" is the lineage, *kul*, a subdivision of the agnatic group, *thar*.

[24] Cf. MA pp. 433-440.

[25] The MA calls these relatives *dasāhā bhāi*, *dasāhā* < *dasāha*, 'period of ten days'. The later edition of the MA (2009, IV: 94f. § 11) prescribes 13 days of mourning for one's father and mother. Among the Chetri caste, the *bhāi (dājyubhāi)* related within three generations have to observe 13 days (Bista 1972 a: 40f.).

[26] MA p. 433 § 19, 22, p. 440 § 60.

— 3 days (instead of 10): the *bhāi* within 7 generations;
— 1 day (instead of 3): the *bhāi* between the 8th and 13th generation;
— 0 days (instead of 1): the *bhāi* from the 14th generation onwards; for them a bath will be sufficient to get rid of the impurity.[27]

If the deceased was an ascetic *(wānaprastha, sannyāsi)* or was just about to pass his "years of spiritual apprenticeship" *(wrahmacāri)*, only his parents are obliged to observe 10 mourning days, whereas his *bhāi* can purify themselves merely by taking a bath.[28]

If the deceased was an adoptive son, the mourning period to be observed is:

— 10 days by his parents, his foster parents and his foster parents' *bhāi* if the deceased belonged to the same caste as his foster parents;
— 3 days only by his foster parents and their *bhāi* if the deceased belonged to a lower caste, from which the foster parents do not accept *bhāt*.[29]

Another essential factor is the caste status and the feme's status of the deceased person's mother. If she is *lyāitā* ("concubine"), or if she belongs to a caste ranking lower than her husband's, the deceased child must be mourned

— 10 days by his/her mother, but only
— 3 days by his/her father.[30]

The impurity can also affect persons who have no kin ties to the deceased. In these cases again the "personal status" is paramount. For example:

— Slaves have to observe 10 days of mourning in the case of their master's or mistress' death, whereas servants and bondsmen only 3 days.[31]
— If one's spiritual teacher, *guru*, or one's *guru's* wife *(gurmā)* dies, one remains polluted for 3 days. The reason is that one's *guru* is regarded as a fictitious relative.[32]
— The king's death pollutes all his subjects, namely the Brahmins for 3 days

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[27] MA p. 433 § 19.
[28] MA p. 435f § 33.
[29] MA p. 434f. § 28.
[30] MA p. 434 § 26. The rule is plausible as the caste status of the issue is also determined by the caste or feme's status of the mother.
[31] MA p. 435 § 30.
[32] MA p. 433 § 22. The relations to the *guru* are also subject to the rules of incest, cf. MA p. 530 § 11, p. 541 § 16, p. 546 § 15, mentioned only in reference to the two highest caste groups. Cf. also MA p. 557 § 2; p. 558 § 4, 5; p. 571 § 14.

and members of other castes for 13 days.[33]

On the other hand, there are bereaved who do not become polluted even if they are closely related to the deceased. The king, the ministers in office, who have to carry on the government, as well as warriors on the battlefield are not subject to any avoidance at the death of one of their relatives.[34]—In other cases, avoidance rules are partly suspended. Thus a Brahmin is free to go on performing life cycle rites for his clients even if amidst his work one of his relatives dies.[35] If physicians *(waidya)*, slaves and washermen *(dhowi)* are polluted by a death in their families, they are not prevented from carrying on their respective duties.[36] The exceptions are noteworthy as the pursuit of the professional duties mentioned also implies physical contact and/or the acceptance of food and medicine.

Concluding remarks

We see that, on the one hand, certain persons are automatically affected by birth and death impurity, whether they touch the mother and the corpse respectively or not, but on the other, that this impurity can be transferred from these persons to others who are not automatically affected. This shows that the rules of mourning cannot exclusively be interpreted as something to engender solidarity among the kin group, as a functionalist would see it.

Temporary-personal impurity and permanent-collective impurity are not entirely disconnected conceptions. We have seen that the caste status of the deceased and/or the bereaved is one of the factors determining the duration of the mourning period and thus the intensity of impurity. The relevance a woman's feme's status may have, has also been commented on.

In other respects, too, we find a number of analogies and correspondences. Both kinds of impurity can be transferred through water, specific kinds of food and through physical contact. The list of foods tabooed for the mourners is of particular interest because such interdictions of temporary validity are paralleled by those which are permanently effective and concern the interrelations between castes.

As has been emphasised by Dumont and Mandelbaum,[37] a person who is in a

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[33] MA p. 429 § 1

[34] MA p. 437 § 43-45. With reference to the king and his ministers *(mantri)* the MA reasons: *des desāwarko kām ra āphnā rājyako sthiti wandowast garnu parnyā hunāle* ..., that is, 'because they have to be active in the field of the relations to foreign countries and in governing their own kingdom' (MA p. 437 § 43). With regard to the classical Indian sources cf. Gonda 1966: 15f.—According to the Manu Saṁhitā (1909: 198f.), no impurity exists for persons killed in battle, by lightning and by execution; at the king's death, only one day of impurity has to be observed by his successor, due to his responsibility as ruler.

[35] MA p. 437 § 46.

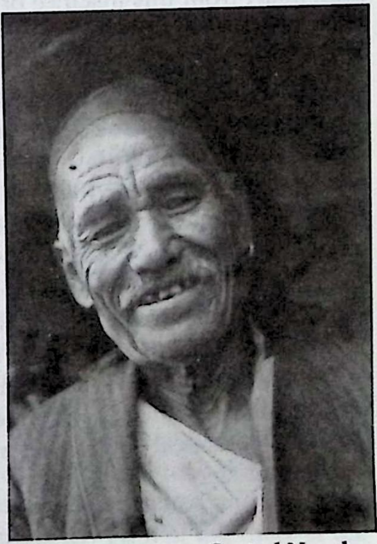
[36] MA p. 439 § 54. The same applies to childbirth.

[37] Cf. p. 60f.

5. A Tāmāṅg woman distilling millet liquor, Central Nepal.

6. A Hill Newār shopkeeper, Central Nepal.

7. A Tāmāṅg girl feeding her brother, Central Nepal.



8. A Tāmāṅg man, Central Nepal.

state of personal impurity is put on a par with an Untouchable. This is endorsed by the MA. What is more, judging from the MA, in some cases the mourner is even more impure than the Untouchable. Thus it is laid down that one ought to refuse any food offered by those among the bereaved who have been living under one roof with the deceased. As we have seen, even certain kinds of food, such as fruits and other raw food which may unhesitatingly be accepted from Untouchables, must not be accepted from a mourner.[38]

There is another rule which states that from a "Cord-Wearer" woman in confinement one may accept water 20 days after the delivery, whereas *bhāt* may be taken only after the 30th day. Its parallel is found among the acceptance rules permanently effective between the castes, namely that *bhāt* is more susceptible to impurity than water, and that its acceptance is handled, therefore, more restrictively.[39]

In spite of the correspondences between them, temporary and permanent impurity seem to be inconvertible in that *bhāt* acceptance from a mourner's hand does not entail the degradation of the receiver to the status of an Untouchable. He is only put into a state of impurity for a number of days as if he himself belonged to the mourners.

The fact that Brahmins must observe only three (instead of 13) days' mourning at the king's death can hardly be regarded as an indicator of their being more resistant to impurity than other castes. Rather, this rule seems to express that it is the Brahmin alone who ranks higher than even the king and his caste (Ṭhakuri). Seen apart from this instance of nationwide mourning, the MA does not mention any direct correlation between caste status and the degree of personal impurity which would indicate that, say, Brahmins were obliged to observe a longer or shorter mourning period than the Untouchables.

In Jayasthiti Malla's code,[40] drawn up more than 400 years prior to the MA, the number of mourning days to be observed varies with the caste of the bereaved without being correlated with the castes' individual position within the hierarchy. From the classical sources of Indian law we know of examples of a progressive correlation. The indications, however, diverge: at times the Brahmins, at times the Untouchables have to observe the longest period of mourning. Yet, other sources maintain that all *varṇa* have to observe the same number of days.[41]

Finally, it should be recalled that in some cases the rules of personal impurity do not become effective. The examples of the king, the ministers, the physician as well as of the woman in confinement, who for two brief periods is not impure, show that practical considerations may overrule the "autodynamics" of impurity and its transfer.

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[38] Cf. p. 63.

[39] Cf. p. 20ff.

[40] Laṁsāl 2023: 45-50.

[41] Kane 1953: 267ff.; Orenstein 1968: 117f.

VII

THE SUBSTANTIATION OF THE HIERARCHY

> "Although an 'interactional theory' seems more satisfactory in explaining details of this caste hierarchy, an 'attributional theory' nevertheless seems to form the basic belief structure within which these details are worked out." (Harper 1964: 192).

Status and purity

As the preceding chapters have shown, the concept of purity plays a central part in the MA. Obviously, the primary categories of the caste hierarchy are based on the gradation "pure-impure" (or, more precisely, "purer-less pure"). The MA's terminology confirms that there is no caste which is irresponsive to purity and which would thus be placed outside the gradation of pure-impure. After a *patiyā* absolution, for example, both a "Cord-Wearer" and an Untouchable are called *śuddha*.[1] Moreover, the discussion of inter-caste relations has illustrated that an Untouchable's being *śuddha* is always to be seen in relation to that of a "Cord-Wearer". That is to say, every caste is associated with a specific amount of purity/impurity, as is proved, among other things, by the MA's term *cokho jāt*, 'pure caste(s)', for the first three caste groups of the hierarchy.

To be more precise, the MA's diction reveals that there are various, sometimes very subtle, degrees of impurity. The terms *cokho*, *śuddha*, *biṭulo*, etc, however, are not used with reference to any possible way of possessing, gaining or losing purity. Purity/impurity, on the one hand, and caste status, on the other, are not always explicitly represented as correlates. It is the inter-caste relationships which offer proof of the assertion that the various castes and possibly their subdivisions possess different amounts of impurity. First of all, there is the rule according to which someone who accepts *bhāt* from a member of a lower-ranking caste can expect to be degraded. Especially the degradation to the offerer's status suggests that the amount of purity the receiver possessed is reduced to that of the offerer ("transferred impurity").

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[1] Cf., for example, MA p. 669 § 3.

There are other kinds of inter-caste contact, such as water acceptance or bodily contact (touch), which represent a vehicle less susceptible to impurity and which are not polluting within a particular range of differences in caste status. They do not entail degradation, punishment or other consequences injurious to the higher-ranking party involved.[2] But even in cases where the offender is not explicitly degraded (expelled from his caste or from the *bhāt* commensality), his degree of purity obviously decreases. Imprisonment, execution and enslavement also imply a sort of degradation, as will be shown later.[3] What is more: actions which are actually perfectly legal can result in a loss of purity; suffice it to recall the decline in the feme's status with its consequences on caste status.

As we have seen in figs. 4 to 11, the gravity of the act (offence) does not only depend on the act itself, but also on the status of the parties involved. The gravity indicates the "status value" of each caste or caste group, from which the amount of purity reduced by the act can be inferred.

It must, however, be stressed that the status-specific purity is not an exactly quantifiable substance. The manifold correspondences between temporary and permanent impurity or the partial convertibility of the pollutions of different origin only indicate an interdependence between status and purity—without being subject to a quasi-physical law of conservation. Consequently, the term "transferred impurity", as introduced by us, can be used only as an auxiliary concept. From the legal viewpoint of the MA there is only "produced impurity", produced by the gravity of the offence alone which, in turn, is determined chiefly by guilt and only in some instances by the "autodynamics" of impurity. On the one hand, as we have seen, the MA clearly distinguishes between knowingly *(jānijāni)* and unknowingly *(bhor)* committed offences; pollution can simply be annulled by purification if it has been contracted by error, or pollution can be regarded as nonexistent in cases of emergency. On the other hand, we have dealt with a few cases in which error or emergency do not suppress pollution, such as the consequences of sexual intercourse for a woman.[4]

How does the legislator himself justify the hierarchy of castes and what is in his view the substantiation for the status-specific gradation of purity?

Conspicuously, the hierarchical positions occupied by most of the higher castes can be inferred only from their consecutive enumeration in several passages of the MA. The castes of the intermediate caste groups ("Non-enslavable Alcohol-Drinkers" and "Enslavable Alcohol-Drinkers") are seldom mentioned individually; much less still are they enumerated in the order of their status position within their caste group. For the impure castes of the category "Water-Unacceptable", however, the MA offers not only a clear-cut status allocation but also a substantiation of this allocation. It is worthwhile expanding on this passage.[5]

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[2] Sexual intercourse poses more complex problems, since its consequences are not only determined by caste affiliation, but also by the degree of relationship (incest) and the parties' sex (incest, feme's status). Cf. pp. 35ff.

[3] pp. 160, 171.

[4] Cf. pp. 39-45 and 168ff.

The hierarchy of the impure castes[6]

1. The lowest caste of all are the Cyāme (Cyāmhākhalak), since they accept the *juṭho* of all the other castes above them, from the high castes down to the Poṛe (Poḍhyā): *upallā jātdekhi poḍhyā takko juṭho khānāle sawai jātbhandā sānu cyāmhākhalakko jāt*.—As the Cyāme are scavengers, the word *juṭho* is obviously used in the extensive sense of 'filth'. Moreover, in past times they were renowned for collecting and eating the food leftovers of other castes, and as we have seen, *juṭho* primarily stands for 'leftover' and 'polluted food'.

2. The Poṛe (Poḍhyā) (skinners and fishermen) rank higher than the Cyāme, since they decline to accept food *(nakhānyā hunāle)* from the latter.

3. The next higher caste are the Bādi (Wādi) (musicians and drum-makers) because they do not accept food from the Cyāme and Poṛe and because they live on singing, dancing and begging by going from house to house *(ghargharmā gāi nāci māgi khānyā hunāle)*.

4. The next higher are the Gāine (Gāinyā) (minstrels, singers) because they do not accept food from the Bādi and because they live on singing, playing music and begging *(gāi wajāi māgi khānyā hunāle)*.

5. The next higher are the Damāi (tailors and musicians) because they do not take food from the Gāine and because they refuse to accept *bhāt* from the offspring of a marriage between a Damāi man and a Gāine woman.—Here for the first time the word *bhāt* is employed; hitherto only the verb *khānu*, 'to eat', figured in the text.

6. The next higher are the Kaḍārā, offspring of marriages between Kāmi and Sārki because they do not accept food from the Damāi.[7]

7. The Sārki (cobblers) and Kāmi (blacksmiths) rank above the Kaḍārā because they traditionally refuse to take *bhāt* and water from the latter *(bhāt pāni aghi nakhāi āyāko hunāle)* and because the Sārki and Kāmi do not accept water (and *bhāt*, as it emerges from the context) from one another, whereas they mutually accept roasted and fried food *(bhutyā polyāko)*. The paragraph concludes in adding that from now on Kāmi and Sārki do not need *patiyā* (absolution) if they accept water from a Kaḍārā.

As we have already seen, the Kāmi and Sārki are of equal rank and represent the highest castes among the untouchable impure castes. The text continues with the enumeration of the touchable impure castes.

8. The next higher are the Kulu, whose occupation is to process leather *(chālāko ilam garnyā)*, because they do not accept *bhāt* and water from the aforemen-

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[5] Cf. also Macdonald (1970) who gives a thoroughly commented translation of the same chapter in the MA of BS 2012 (= 2009).

[6] MA pp. 678-679, cf. also pp. 680-681.—The following is not a full translation.

[7] In the text erroneously *khānyā*, instead of *nakhānyā*.

tioned seven untouchable castes and do not intermarry with the latter.

9. The next higher are the Hindu Dhobi (Hindu Dhowi) (washermen) because they do not accept food from the eight aforesaid castes and do not wash the clothes of the seven untouchable castes and because they (are allowed to) enter certain rooms in the houses of the higher castes, i.e., of their clients.[8]

10. The next higher are the Kusle because they do not take food from the preceding nine castes, because (by profession) they clean the houses of the noblemen *(umrāw)* and the temples, and play music in various sanctuaries.

11. The next higher are the Kasāi (Kasāhi) (butchers and milk-vendors) because they do not take water and *bhāt* from the preceding castes and do not take *bhāt* from the Kusle either, and because all superior castes accept milk from them.[9]

The rest of the touchable impure castes, such as the Muslims, the Europeans (Mleccha), Teli, etc, are not mentioned in this substantiation and will be dealt with later.[10]

So much on the passage dealing with the impure castes. Three conclusions can be drawn from it: Firstly, we see that not even the untouchable castes are outside the gradation of collective purity/impurity. Secondly, the hierarchy is clearly reflected as a linear conception. Thirdly, for the legislator the hierarchical order seems to result primarily from the de facto interrelations, as they have "come to be" among the various castes and which are now codified as such.

The legislator's reasoning is also revealing in the following example. Here we are not faced with the codification of something already existing, but with the allocation of status to a caste which hitherto had not been taken into consideration.

The case of the Mecyā

It is very likely that the subsequent paragraph was included in the MA[11] after the Mecyā, a group in Moraṅg (Terai),[12] had petitioned for an assessment and confirmation of their caste status. The MA states that from BS 1917 puṣ 7 (= 1860) onwards the Mecyā have been a pure caste of the category "Water-Acceptable". This is substantiated by an inventory of their customs hitherto practised on the one hand, and of their relations to other castes, on the other:

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[8] The text mentions *waiṭhak [baiṭhak] maṭān samma*, i. e., 'up to the reception room' which is usually on the first floor of the Newār houses. Śarmā (2019: 810) gives for *maṭān: talāmā koṭhā nabāreko ṭhāũ*, i.e., 'a place on the upper floor, not divided into rooms'.

[9] Does this mean that the Kasāi do accept water from the Kusle?—In the text erroneously *daṇḍ* ('punishment'), instead of *dudh*, 'milk'. MA p. 679 § 11.

[10] Cf. pp. 129ff., 139ff.—The impure castes are given in the same order and with the same substantiation in the later editions of the MA, cf. MA BS 2009, V: 105ff. and Macdonald 1970.

[11] MA p. 392 § 49.

[12] The Mecyā are probably identical with the Mech or Bodo, a group of tribal origin in the far eastern part of the Terai, in Assam and in the northern part of Bihar, cf. Bista 1972 b: 38. According to Shafer (1954: 12f., 23f.), the Sanskrit word for 'barbarian', *mleccha*, may derive from *mech*.

a) The Mecyā decline accepting water from the impure castes of the category "Water-Unacceptable" *(pāni nacalnyā achuti jāt)* and from the Muslims (who are also an impure caste).

b) The Mecyā partake of buffalo meat, pork and chicken, and it is for this reason that they have hitherto been deemed a "Water-Unacceptable" caste and that the Indians *(moglāniyāharu)* do not accept water offered by them. In Nepal, however, the Newār, Magar and Guruṅg (Gurũ) also eat buffalo meat, pork and chicken (respectively); the Lāpcyā (Lepcha) eat elephant meat and the Bhoṭyā (groups of Tibetan linguistic and cultural affiliation) eat beef—and from all these castes water is acceptable.

c) The sons and daughters of the Mecyā work as slaves at the royal court and in government offices *(darwār)*.

d) The Mecyā worship Śiva and are a Shivaitic caste *(siwmārgi jāt)*.

Considering these facts, the court council *(bhārādāri kausal)* decrees the Mecyā to be a caste belonging to the "Water-Acceptable" castes. Should someone from the Parbatiya castes (Nepali-speaking groups) or a Thāru (ethnic group in the Terai) refuse to accept water from the Mecyā, he will be fined.[13]

The full text reads as follows:

> *"... mecyā jātle bhaisi sugur kukhurā. khānyā hunāle. moglāniyāharūle pāni khādā rahyānachan. ra. hāmrā mulukmā pani mecyā jātko pāni khādā. rahyānachan. aba i mecyā jātko. pāni calana [calna] sakacha [sakcha] ki sakdaina bhani bhārādāri kausal hudā. hāmrā mulukmā bhaisi sugur kukhurā. gāī hātiko māsu khānyā. newār magar gurū̃ bhoṭyā lāpcyākā hātko pāni. hāmrā mulukmā calyāko cha i mecyā jātko. tā aghi pani calyāko rahecha. inko chorāchori kamārā kamāri. bhai darwārsamma pani. aghi pugyākā rahyāchan. inharūle. pāni nacalnyā achuti jātkā hātko ra musalmān jātkā hātko pāni pani khādā rahyānachan. deutā siw māndā rahyāchan inharū. siw mārgi. jāt rahyāchan bhanyā inkā hātko pāni calcha. bhaṅnyā bhārādāri. kausalle ṭhaharāudā. āja dekhi mecyā jātkā hātko pāni calyāko cha. parwatyā thārū jātmā. jasle i mecyā jātko pāni khādaina teslāī 5 rūpaiyā daṅḍa garnu ..."*

As the text mentions the Mecyā being slaves, we can assume that they belong to the lowest among the pure caste groups, the "Enslavable Alcohol-Drinkers". Even if the legislator avoids allocating the Mecyā more precisely, that is, fixing their status in relation to other individual castes, he proceeds from the de facto situation. One criterion is deduced from the fact from which castes water is accepted or refused by the Mecyā. Food habits, occupation and religious affiliation constitute further criteria.

The first-mentioned criterion is a structural one, the other criteria are cultural ones. How are the two types of criteria valued or, to be more precise, which one is more decisive for status allocation? Let us take as an example the caste-specific occupations.

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[13] Cf. pp. 110f., 117f.

Occupation and caste status

As we have seen in the paragraphs on the hierarchy of the impure castes, occupation is regarded as a sort of secondary criterion for status allocation. We have to examine now to what extent occupations are interpretable as parameters of the gradation of purity.

First of all, it is obvious that most of the trades pursued by the impure castes are in some way associated with impurity. In the Cyāme case scavenging is a clear proof; begging implies the absorption of the impurity of others, especially in the shape of leftovers;[14] leather-work also means contact with impurity (carcasses).

In Northwest India the untouchable Ḍom are divided into three groups: a) the craftsmen rank the highest, followed by b) musicians whose women practise prostitution, and c) the lowest are those who have to deal with dead animals, such as the cobblers and skinners.[15] The MA, however, lacks such a clear-cut division and does not exhibit a more exact correlation between occupation and caste status. Both the Gāine and Bādi sing. Do the Gāine rank higher than the Bādi on account of the mere fact that the latter also dance? Or, both the Sārki and the Kulu work with leather. However, the Sārki are Untouchables, whereas the Kulu are not.

Can the high position of the Kasāi be explained by the fact that their butcher's trade is, so to speak, rendered "purer" by their simultaneous association with milk production and sale? If the Cyāme are the lowest-ranking caste because they absorb the impurity and filth of all the other castes, then it is more than surprising that the Dhobi are not untouchable although they, as washermen, have likewise to do with impurity. We encounter the same discrepancy with regard to metal-processing castes. The Kāmi blacksmiths among the Parbatiya are untouchable, whereas the Kou, the blacksmiths among the Newār, are not.[16]

The Kāmi also process gold and silver, and this is striking as gold and silver are generally regarded as purer and/or more resistent to impurity than other metals.[17] Among the Newār, goldsmiths are exclusively recruited from the high castes, chiefly the Śākya (or Bāṛā) and also the Udās.[18] These facts suggest that the type of metal to be processed by a caste is disconnected from the status position of that caste.

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[14] Begging done by ascetics and other "holy men" does not seem to fall into that category. The Manu Saṁhitā (1909: 44, 387), for example, allows the Brahmins to beg money on condition that it be spent for the performance of sacrifices.

[15] Berreman 1963: 201, 213-215.

[16] On the Kou cf. p. 113.

[17] My own observation is also endorsed by Macdonald 1970: note 23. On the classification of metals in ancient India cf. Kane 1953: 325.

[18] Cf. Nepali 1965: 150; Höfer 1970: 187 and 1973: 5.

Even the classical sources of Hindu law disagree on which occupations are or are not associated with untouchability. The only fact beyond question is that these sources assigned almost all the occupations, which are nowadays predominantly practised by Untouchables, to groups which they considered to be outside the four *varṇa*.[19]—According to Kane's synopsis of the classical sources,[20] food should be declined (by members of the three highest *varṇa*, obviously) if offered by the following persons: goldsmith, blacksmith, oilpresser, bard (minstrel), singer, actor, physician, courtesan, bamboo-worker (basket-maker), hunter, one who lives on killing animals, tailor, distiller of alcoholic liquor, washerman, leather-worker, carpenter, potter and usurer. Likewise, food should not be accepted from a thief, an impotent man, an enemy, a person with an incurable disease, a widow, a woman without a son, a sonless man, a degraded man or a Śūdra, etc.—As we have seen, many of the occupations listed here are also practised in Nepal by Untouchables or, at least, by members of the impure castes, with the exception of physicians, carpenters, potters and hunters (there is no hunter caste in Nepal).[21] To the Poṛe, classified as the second lowest caste, several of these criteria are applicable at the same time. They are basket-makers, fishermen, skinners, and formerly they also acted as executioners.[22]

Such discrepancies are sometimes also included in the ethnotheoretical reflection. In Mysore, f.e., the relatively low position of the washermen is indeed explained by the fact that "they make things clean".[23] The MA, too, can in some cases invite such speculations, but as a matter of fact it does not in every case indicate occupation as a status criterion. It appears to place the primary significance on the interrelations which a particular caste traditionally has to other castes; these individual patterns of interrelation are, in turn, likely to "correct" the role the impurity of the occupation would have, if considered in isolation, for the status allocation of a caste. This is clearly endorsed by another passage of the MA,[24] stating that the pursuit of certain occupations is disconnected from caste affiliation. The secondary importance of cultural criteria as a whole is also stressed by the discontinuous distribution of food habits (buffalo meat versus pork, etc) and religious affiliations (Hindu versus non-Hindu) of the various castes within the hierarchy of the MA.[25] Finally, certain other cultural attributes, such as cord-wearing and alcohol-drinking, constitute "pilot criteria" for the assignment of a caste to one of the five caste groups.

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[19] Cf. Dumont 1966: 169-176; Kane 1974: 69ff., 171.

[20] Kane 1974: 786f.

[21] On the distribution of occupations in the hierarchy cf. pp. 7-9.

[22] Cf. Nepali 1965: 177; on their role as executioners cf. Oldfield 1974, I: 239ff. and Hodgson 1880. II: 224.

[23] Harper 1964: 192; cf. also Dumont 1966: 123, 172.

[24] MA p. 154f. § 1, 7; cf. also below pp. 92f.

[25] Cf. p. 120.

Attribution and interaction

The interrelations as a status-determining factor not only embrace the acceptance of *bhāt* and water, but also the more general rules of intercourse with other castes. Thus the position of the Dhobi is, among other things, justified by the fact that they are permitted to enter the homes of their higher caste clients. Matters are similar in the case of the Kusle as attendants in houses and temples, or the Mecyā as slaves working in the *darbār*.[26]

However, the distinction between structural and cultural criteria of status seems to be only analytically possible, for the totality of the relations of a particular caste to all other castes may be regarded as status-specific characteristics and thus as a cultural criterion. In fact, all the rules a caste has to observe with reference to *bhāt* and water acceptance or inter-caste marriages, etc, belong to the body of caste-specific customs (tradition), just as do food habits, occupation or religion. In other words, a correlation between the gradation of purity and the hierarchy of status positions can only be maintained if we include the structural criteria in the cultural ones.

The text of the passages quoted above gives the impression that the legislator merely sanctions a posteriori a historically developed multitude of inter-caste relationships. For the authors of the MA it is not an abstract and static collective amount of purity which conditions the status of each caste and thus the empirical reality of the hierarchy. On the contrary: It is this empirical reality which conditions the status-specific amount of purity, since the primary criterion of status is the specific interrelation pattern by which caste X is individualised and put in relation to all the other castes within the hierarchy.

The discussion of the caste system has so far been dominated by two theories: Whereas the so-called attributional theory conceives the cultural attributes of the castes as absolute status criteria, the interactional theory derives its relative status criteria from the totality of inter-caste relations.

The preceding passages amply prove that the ethnotheoretical rationale of the MA is rather interactional. They endorse Marriott's thesis, according to which "Pollution in an interactional hierarchy is not innate, but always social, always a matter of giving and taking, of adding and subtracting. [...] The ritual services which are significant for caste ranking remove pollution, bestow purity, or show honour and deference".[27] The hierarchy, as laid down in the MA, is interactional in that the inter-caste relations are governed by the transferability of purity from the higher to the lower castes, or by the transferability of impurity from the lower to the higher castes. Here, however, we must differentiate:

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[26] A decree of BS 1981 (Sawāl 1981) prescribes that members of the impure castes are, in principle, forbidden to enter the national sanctuary Paśupatināth. However, if members of the castes Cyāme, Poṛe, Kāmi, Damāi, Bhāṭ, Kasāi and Kusle are employed as workers there, they may enter the temple precinct but not the steps leading to the sanctuary itself. On similar decrees from the late Malla period cf. Burleigh 1976: 40.

[27] Marriott 1959: 98.

Marriott writes: "Whatever is given—semen, food, pay, etc—the act of giving is degrading to the receiver, upgrading to the giver. The idiom of 'pollution' provides one major way of establishing [...] caste rank, while rank itself is the outcome of transactions in that [idiom] and certain other idioms.[28] Marriott further states that, in reverse and in contradistinction to food and pay, the one who renders services as a craftsman, etc, always ranks lower than the receiver.[29]

In this exclusive formulation, Marriott's interactional theory can hardly be applied to the MA's conception of hierarchy. The purity deficit inherent in the female and the gradation of the feme's status connected with this deficit do not result from the fact that it is the woman who receives the semen of the male. Even if this were the case, the theory does not account for the reason why, for example, sexual intercourse with an untouchable woman leads to the degradation of her status-superior male partner. Or, what has physical contact (untouchability) to do with Marriott's "transactions"? Why is it defiling and forbidden to accept cooked rice, whereas raw rice may be accepted even from an Untouchable? Admittedly, the bulk of the MA is concerned with the question of which substances may be accepted from whom and which not. However, Marriott's theory fails to give a satisfactory answer to the question why these prohibitions are limited to very specific substances.

Let us add that the aspect of services, as shown by Marriott, seems to be of secondary importance for the MA's substantiation of the hierarchy of the impure castes. The same is true of the ethnographic context. With reference to a village in Central Nepal, Stone mentions that her informants "explicitly refer to food transference as the principal means by which the caste hierarchy is operationalised, and [...] much less emphasis is placed on service exchanges: as [...] caste-determined service relationships are fewer in village Nepal than in India and we do not find an elaborate *jajmānī* system there".[30]

A more complete, although too much condensed, formulation of the interactional theory is offered by Marriott and Inden in the latest edition of the Encylopaedia Britannica.[31] In short, the status position of a caste within the hierarchy is the materialisation of the morality specific to this caste. The morality consists of a behavioural code which lays down both intra-caste and inter-caste relations, and it is equated to a substance. This substance is in the corporative possession of the members of a caste, it is transmitted from generation to generation through marriage, initiation rites, etc, and is defended against other castes. Irregular relations within one's own caste or with other castes impair this "coded substance". The authors continue:

> "Each caste is involved through its existence and its means of subsistence in transformations and exchanges of transformed natural substances. Of these

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[28] Marriott 1969: 1172.

[29] Marriott 1968: 169f.

[30] Stone 1977: 123; on *jajmānī* cf. pp. 80ff.

[31] Inden and Marriott 1974: 983-984.

> substances, a caste's own bodily substances (e.g. hair, blood, semen, and faeces) and food (which is seen as becoming transformed into human bodily substance) are considered capable of creating, expressing or altering relationships of rank and solidarity between it and other castes. The substances derived from each caste's pursuit of its occupation are also major media, along with services, of inter-caste exchange."

In sum, the rationale of the hierarchy is a sort of intricate metabolism. The gap which was manifest in the earlier attempts of the interactional theory[32] is closed here in that the authors try to explain (unfortunately without exemplification) why giving and receiving determine caste status at all. By introducing the notion of coded substance, moreover, they tacitly envisage a sort of synthesis between the attributional and the interactional models and come thus closer to what we have been postulating as a caste-specific, collectively owned amount of purity. Dumont[33] aims at the same synthesis, though with a different emphasis, in that he wants to see interaction 'encompassed' (englobé) by attribution. In his view, hierarchy is the attribution of a rank to each element *by reference to the whole* of the hierarchy.

This orientation towards the whole is only fragmentary in the explicit reasoning the MA gives for the caste hierarchy, as is manifest, for example, in the paragraphs on the Cyāme and the Kasāi where reference is made to all other castes.[34] It is, however, implicitly evident in all the rules of inter-caste relationships as summarised in our diagrams showing the consequences of *bhāt* acceptance and sexual intercourse. The latter also illustrate the central role of the opposition pure-impure which Dumont considers the very ideological basis of the hierarchy.[35]

To conclude this chapter we must raise the question why the MA fails to give a similar substantiation for the hierarchic order of the pure castes. Only a hypothetical answer is possible. The most salient reasons may be seen in the legislator's indifference and/or lack of information, as many of these castes were, at that time, made up of ethnic groups in remote areas. The impure castes, on the contrary, were much easier to allocate. Their customs and interrelations were known due to the fact that they, as service castes, maintained regular relations with the higher castes and that many of them settled in the Kāṭhmāṇḍu Valley. Their political and economic dependence enabled the legislator to assign their status positions, so to speak, from above without the risk of possible errors or protests.

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[32] Marriott 1959 and 1968.

[33] Dumont 1966: 120f.

[34] Cf. p. 71f.

[35] Dumont's holistic approach and Marriott's and Inden's "metabolistic" interpretation represent a departure from the rather deductive, socio-centric theory-building hitherto prevailing in that they both attempt to make use of the ethnotheoretical conceptions of the Indians themselves. A particularly convincing analysis of such an ethnotheoretical conceptualisation in South India is given by Barnett (1976), whose paper reached me too late to be discussed in detail in this study.

VIII

THE DIMENSIONS OF THE HIERARCHY

Principal dichotomies

Fig. 12 is a schematised representation of the dimensions of the caste hierarchy of the MA. In the section on the left, headed "etic", the five caste groups are to be seen; c 1, c 2, c 3 symbolise a fictive number of individual castes within each caste group. On the right, the "emic" dimensions are shown, as revealed by the nomenclature of the MA and the inter-caste relationships. The line running stepwise across columns I-V marks the limits set by some of the cultural characteristics as common denominators. The horizontal heavy lines in columns VI-IX correspond to those limits beyond which specific contacts with other castes are polluting; simple arrows show the direction of permitted *bhāt* and water acceptance as well as that of legal hypergamous sexual contacts; double-headed arrows symbolise polluting contacts.

In columns I-IX the "etic" denotations are "emicly" decoded. Columns I-V show the hierarchy as an intertwinement of distinctions or oppositions. The Brahmin, for example, is at the same time cord-wearer, non-enslavable, water-acceptable and non-untouchable and by these distinctive features he is set in contrast to anybody who is non-Brahmin, alcohol-drinker, enslavable, water-unacceptable and untouchable.[1]

Although this intertwinement is already implied in the names of the caste groups (that is why the names sound somewhat clumsy in translation), it requires further comment. In spite of the fact that most of the members of both impure caste groups are also enslavable, only the third pure caste group is explicitly called "enslavable" in the MA. The same is true of the denotation "alcohol-drinker" since, as a matter of fact, most of the impure castes are also alcohol-drinkers. The restrictive usage of these labels in the legal terminology is not only a matter of linguistic economy; it may indeed be due to the fact that there are some exceptions. We know, for example, that the Muslims, who belong to the impure and touchable castes, do not partake of alcohol and that they occupy an exceptional position with regard to *bhāt* and water acceptance.[2]

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[1] Cf. also Dumont (1966: 81, 94) who speaks of a "multiplicité de critères" and a "série de distinctions".

In the literature on India there are frequent references to the demarcation line between vegetarian and non-vegetarian castes. This dichotomy does not exist in Nepal, and we have seen that even Brahmins eat the meat of certain animals.[3] As to the caste hierarchy of the MA, the categorisation vegetarian/non-vegetarian seems to be replaced by the dichotomy between cord-wearing and alcohol-drinking castes. The question to what extent this replacement is connected with the specific history of religions in Nepal would require a separate study ... Another dichotomy, at least as important as the first one, is that between "Water-Acceptable" and "Water-Unacceptable" castes.[4]

Besides the ones already listed in columns I-V (fig. 12), the MA often alludes to some further principal dichotomies.

Proceeding from the kind of punishment to be inflicted on their members, the MA classifies the castes into: a) *hānnyā jāt* or *kāṭinyā jāt*, i.e., those castes among whom certain crimes are punishable by death,[5] and b) *muḍinyā jāt* i.e., those for whom the death penalty is replaced by shaving and subsequent degradation. Here the dichotomy Brahmin/non-Brahmin is marked, and *hānnyā jāt* are all castes except the Brahmins (Upādhyaya and Jaisi), as it seems.[6]

Less frequently mentioned is the dichotomy *achuti jāt* or *pauni (puhuni) jāt*, on the one hand, and *wiṣṭ (biṣṭ) jāt*, on the other. Here the distinction is between the untouchable *(achuti)* service castes *(puhuni)* and the touchable receivers *(biṣṭ)* of the latter's manual services.[7] This dichotomy reminds us, even though not in detail, of the *jajmānī* relationship with which we are well familiar from India. The

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[2] Cf. pp. 139-141.

[3] Cf. p. 17; on India cf. Mandelbaum 1970, I: 188ff., 193, 200f.

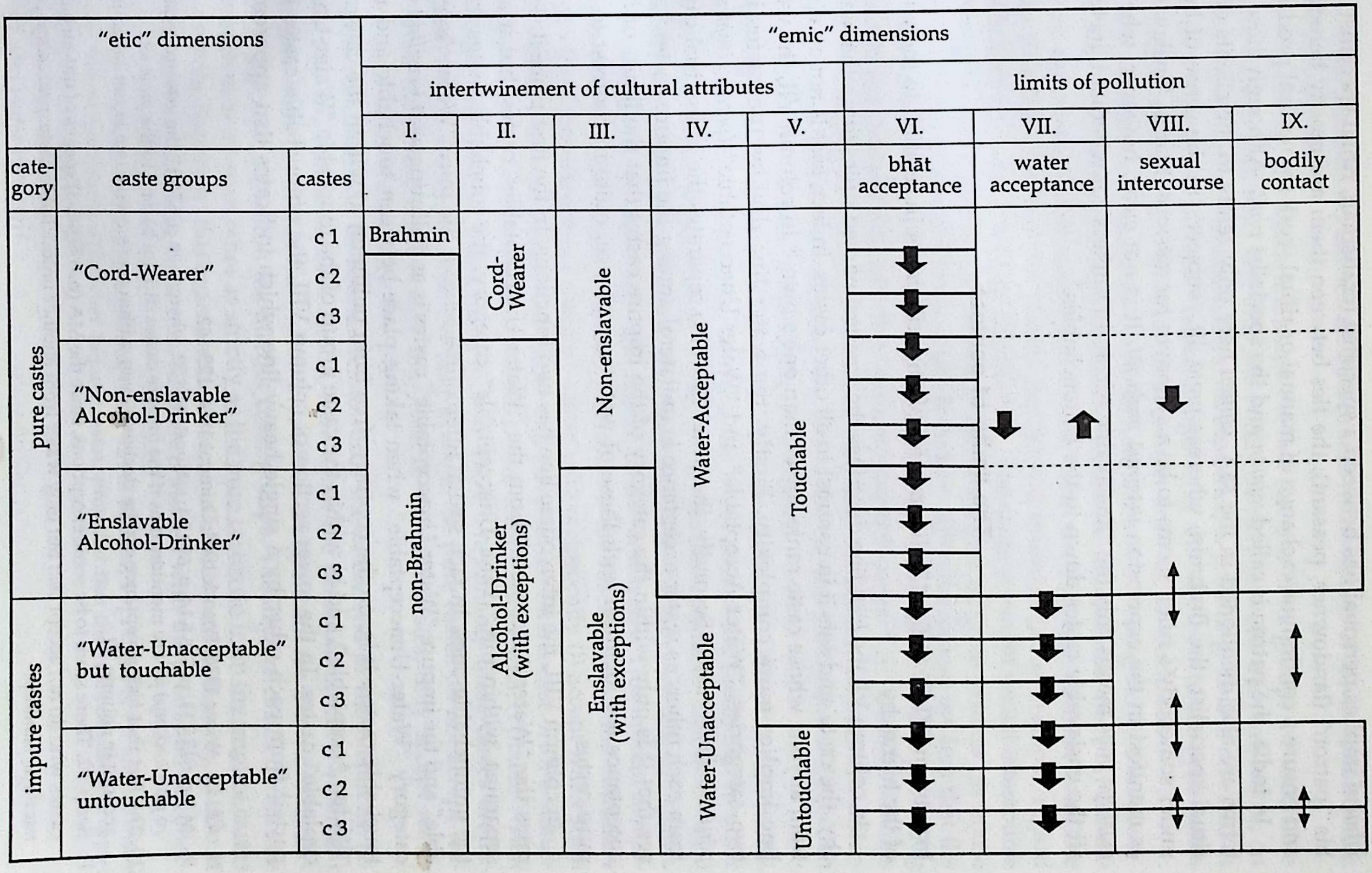
[4] In a regional hierarchy in Bengal, discussed by Dumont (1966: 109f.), the castes are divided into two major clusters: those from which the Brahmins do, and those from which the Brahmins do not, accept water.—In the MA, the demarcation line between "Water-Acceptable" and "Water-Unacceptable" castes is emphasised by several additional regulations. Thus no member of the "Water-Unacceptable" castes is allowed to give the *ṭikā* mark on the forehead of somebody belonging to the "Water-Acceptable" category (MA p. 391 § 42-43). The interdiction obviously results from the fact that *ṭikā*-giving connotes blessing.

[5] *hānnyā* < *hānnu*, 'to strike', 'to kill', and *kāṭnyā* < *kāṭnu*, 'to cut', 'to kill'.

[6] *muḍinyā* < *muḍinu/muṛinu*, 'to be shaved'. Shaving, as a concomitant of degradation, is also mentioned with reference to the "Non-enslavable Alcohol-Drinkers" (MA p. 212 § 1), but without replacing capital punishment. On the "unkillability" of certain ascetics cf. below p. 108.

[7] Cf., i.a., MA p. 412 § 18. pp. 692-693 § 4-6: *pauni jāt*; and MA p. 484 § 7: *upallo biṣṭ jāt*. On meaning and etymology cf. Turner 1965: 200, 449; Bista 1972 a: 24f. and Höfer 1976: 350ff.

Fig. 12: The dimensions of the hierarchy (generalised)


"etic" dimensions
"emic" dimensions
intertwinement of cultural attributes
limits of pollution
I.
II.
III.
IV.
V.
VI.
VII.
VIII.
IX.
cate-gory
caste groups
castes
bhāt acceptance
water acceptance
sexual intercourse
bodily contact
pure castes
impure castes
"Cord-Wearer"
"Non-enslavable Alcohol-Drinker"
"Enslavable Alcohol-Drinker"
"Water-Unacceptable" but touchable
"Water-Unacceptable" untouchable
c 1
c 2
c 3
Brahmin
non-Brahmin
Cord-Wearer
Alcohol-Drinker (with exceptions)
Non-enslavable
Enslavable (with exceptions)
Water-Acceptable
Water-Unacceptable
Touchable
Untouchable

jajmānī implies personal ties between a specialist (craftsman, ritual specialist) and his "patron" (landowner, peasant); the ties between them are mostly hereditary and ensure a continuous exchange of manual or ritual work for natural products.[8]

In India, the patron is called *jajmān* and the specialist *prajā*. Although these two terms are also mentioned in the MA, *jajmān* here only refers to the clients of the ritual specialist, the Brahmin, whereas *prajā*, lit. 'subject' (in the sense of being under somebody's rule), seems to be a synonym for *māsinyā*, that is, 'enslavable', as manifest in the expression *māsinyā prajā jāt*. It is not clear, however, whether *māsinyā prajā* means only the "Enslavable Alcohol-Drinkers" or whether it includes all the enslavable castes down to the Untouchables.[9]

The limits of contact

In columns VI-IX of fig. 12, the transfer of impurity is set in relation to the whole of the hierarchy.

In column VI, the *bhāt* line describes the smallest named unit within the hierarchy, the caste, and sets it in contrast to all other castes. In fact, *bhāt* is not accepted from anyone whose caste ranks lower than one's own.[10] In column VII, the water line implies more complexity. Firstly, the water line divides the castes into two categories: "Water-Acceptable" and "Water-Unacceptable" (*pāni calnyā* and *pāni nacalnyā)* castes. Secondly, the water line also separates the individual castes from each other, as water acceptance is unilateral among the impure castes.[11] We see that it is only within the category of the impure castes that the limits of *bhāt* acceptance are identical with those of water acceptance, quite in contrast to the pure castes.

In column VIII, the intercourse line has two functions. In the first place it separates the "Water-Acceptable" from the "Water-Unacceptable" castes, but it also separates, within the "Water-Unacceptable" category, the touchable castes from the untouchable ones. In fact, sexual intercourse *between* the pure "Water-Acceptable" and the impure "Water-Unacceptable" castes is as polluting as it is *within* the category "Water-Unacceptable" when taking place between touchable and untouchable castes. It is, on the contrary, free from pollution a) within the category "Water-Acceptable", and b) within the caste group of the touchable "Water-Unacceptable" castes. In the lower section of column VIII, the untouchable castes are parted from each other by a single heavy line which indicates that apparently many Untouchables regard sexual intercourse with women of lower untouchable castes as polluting.[12]

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[8] Cf., i.a., Wiser 1936; Pocock 1962; Dumont 1966: 128-142.

[9] MA p. 545 § 11, p. 546 § 14, p. 692 § 1: *māsinyā prajā jāt*; whereas on p. 674 § 2 the *māsinyā prajā jāt ra pāni nacalnyā jāt* are mentioned as if the impure castes did not belong to the *prajā jāt*.

[10] The fact that *bhāt* acceptance can be declined even within one's own caste is not taken into account in column VI.

[11] See p. 22. There seem to be some exceptions, since the MA (p. 699 § 2-3) speaks of untouchable castes who do not accept *bhāt* but only water from another untouchable caste: *pāni calnyā bhāt nacalnyā/namilnyā*.

In column IX, the touch line skips the last but one caste group, the touchable impure castes. That is to say, only the bodily contact between the pure castes, on the one hand, and the Untouchables, on the other, is polluting. This is revealed at least by a passage of the MA[13] which obliges only the members of the pure castes to perform a purification after physical contact with an Untouchable.

Both columns VIII and IX need further comment. According to my own observation in Central Nepal, the untouchable castes are untouchable not only for the higher, non-untouchable castes, but also for each other, in some cases at least. The Kāmi (blacksmiths) and the Damāi (tailors and musicians), for example, regard bodily contact with each other as polluting. The same is true of sexual intercourse between the Kāmi and Damāi. A Kāmi does not allow a Damāi to enter his house and would never accept *bhāt* or water from him. Thus it becomes evident that the relations between the two untouchable castes reproduce the relations prevailing between the untouchable and the non-untouchable castes.[14] As the MA remains silent on the question whether and to what extent bodily contact between different untouchable castes is polluting, the heavy line across the untouchable section of column IX refers only to ethnographic evidence.

If one imagines columns VI-IX projected over each other, the various demarcation lines show a concentration towards the lower end of the hierarchy. In other words, the castes of the impure category "Water-Unacceptable" are as isolated from those of the pure category "Water-Acceptable" as they, the impure castes, are from each other, especially with regard to *bhāt* and water. This mutual demarcation of the impure castes contrasts notably to the rarefaction of the boundary lines within the category of the pure castes who reciprocally (!) accept water from each other, who may touch each other and have sexual intercourse with a status-inferior woman without being polluted. The term "Water-Unacceptable" *(pāni nacalnyā)* can thus be interpreted in two ways. Presumably these castes are labelled "Water-Unacceptable" not only because the pure castes do not accept water from them, but also because they, unlike the pure castes, only accept water from each other unilaterally.

This concentration of boundaries towards the lower end of the hierarchy reveals two important aspects. Firstly, here again the principle of intertwinement becomes manifest in that the dichotomy, which is significant for the entire hierarchy, is reproduced within the inferior caste groups. The impure castes demarcate themselves from each other as strictly as the pure castes do from the impure castes as a whole. Secondly, this concentration seems to be inherent in the very nature of the hierarchic principle, since it is, in fact, connected with the gradation of collective purity. That is, the concentration of the pollution-boundaries may result from the fact that collective impurity increases towards the lower end. The demarcation of the lowest castes from each other is also an expression of the demarcation from the highest amount of impurity (or lowest amount of purity) as represented by the Cyāme, the lowest caste in the hierarchy. The Cyāme, indeed, absorb the impurity of all the other castes and the "impurest impurity" a living being can produce, namely faeces, garbage and leftovers of food.

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[12] Cf. fig. 7 case 24 and below. According to the MA of BS 2009, V, p. 29 § 4-5, the impure castes are free to intermarry with other impure castes, provided that the rules of *bhāt* and water acceptance are observed.

[13] MA p. 679 § 12.

[14] Cf. also Höfer 1976: 391f.

Although Max Weber[15] has already emphasised that it was the inferior castes who observed "the strictest caste exclusivity", anthropology has for a long time tacitly treated the Untouchables as a homogeneous block. The subhierarchy they form has not been exhaustively analysed; in some recent works the existence of this subhierarchy has at least been taken note of.[16] It may be seen in connection with this "exclusivity" that India's Untouchables are either characterised by numerous, though demographically very small, castes or by a conspicuously large number of subcastes inside one and the same caste.[17]

It is the highest castes among whom one would expect a similar concentration of boundaries, as it is they who have to defend the highest amount of purity in order to maintain their status. Columns VI-IX in fig. 12 show, however, that this is not the case. On the other hand, various paragraphs of the MA suggest that there is still something like a "potentiation" of the purity rules, especially among the "Cord-Wearers", and this seems to be confirmed by a retrospective look at the previous chapters. Evidence is primarily furnished by the gradation of fines, the amount of which is a function of the caste statuses of the offender and/or the victim. We have concluded from the regulations of the MA with regard to the higher castes that purity is much more vulnerable and more easily lost than impurity. To say, however, that the higher the amount of status-conditioning collective purity the more fragile it is, is a contradiction. It can be explained away by dialectically reversing the formulation: the less the collective impurity the more effective (i.e., more polluting) will be an additional impurity contracted from another person or from an object or deed,—but again this formula is contradicted by the concentration of pollution boundaries at the bottom of the hierarchy.

We have to content ourselves with the statement that the closer the castes are to one of the ends of the hierarchy, the acuter is for them the problem of preserving purity. Those who have "the most" purity have to maintain the distance separating them from the entire rest of the hierarchy; and those having "the least" purity have to maintain the distance to the lowest caste that the hierarchy knows at all.

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[15] Weber 1972: 104.

[16] Mandelbaum (1970, I: 298f.) quotes Gandhi: "the Untouchables have their own Untouchables"; Béteille (1967: 98) emphasises that with regard to their interrelations among themselves the inferior castes are much more strict than some high castes. Harper (1964: 191f.) explains the strictness with which Untouchables adhere to purity rules by the fact that they are particularly well acquainted with the Brahmins' "orthopraxis"; their tendency to imitate the Brahmins is part of their aim at emancipation and improving their status. Cf. also Berreman 1963: 232ff.

[17] Mencher 1974: 471. The author explains this phenomenon as a system-immanent tendency to disunite and desolidarise the underprivileged castes.

In contrast to the highest and lowest castes, purity and status considerations seem to be less relevant in the middle of the hierarchy. The legislator refers to the "Non-enslavable Alcohol-Drinkers" and the "Enslavable Alcohol-Drinkers" mostly as caste groups; the individual castes belonging to them are only sporadically mentioned and if so, then without any fixation of their respective status position. As the previous chapters on inter-caste relations have shown, status disparities among these castes are rather implicitly recognised and seem to be less relevant for purity maintenance than is the case among the "Cord-Wearers" and the impure castes. One may add that this indifference is paralleled, as it seems, by a ubiquitous dissent in the evaluational rankings in the middle reaches of the caste hierarchies in India.[18]

Notwithstanding the particular historical conditions which meant that the castes in the middle of the hierarchy were hardly known at the time of the codification,[19] it is obvious that here we have to do with a phenomenon inherent in the structure of the caste hierarchy per se.[20]

What does the MA mean by *jāt*?

Our statement, according to which the smallest named unit of the hierarchy, the caste, is defined by the *bhāt* line, requires some elaboration.

In one passage the MA[21] uses the expression *jāt bhāt pāunu*, lit. 'to obtain caste and *bhāt*', that is, 'to be re-admitted into the caste and *bhāt* commensality'. This does not mean, however, that *jāt* and *bhāt* are necessarily congruent. As we have seen, an Upādhyaya man is not obliged to accept *bhāt* from his wife, even if she is of the Upādhyaya caste.[22] Or, if a Rajput man marries a Jaisi woman and, vice versa, a Jaisi man a Rajput woman, the wife will be integrated into the husband's caste *(usai jātmā milāidinu)*; the husband, however, will not be obliged to accept *bhāt* from her.[23]

The limits of *bhāt* acceptance, as represented in fig. 12, are only ideal, for, at least among the highest castes, the commensality boundary runs across a group defined by the MA as one *jāt*. The acceptance of *bhāt* can be permanently refused between persons belonging to the same caste either a) because of the fact that the offerer belongs to a lower status group (subdivision, "subcaste") within one and the same caste, or b) due to the offerer's inferior feme's status. The MA is careful enough to distinguish between *jāt* and commensality when it formulates, e.g., *jāt mildā bhāt calyākā* [*mānis*], that is, '[a person] of the same *jāt*, from whom *bhāt* can be accepted'.[24]

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[18] See Barber 1968: 24f.

[19] Cf. below pp. 117ff.

[20] Of course, a "purely" sociological interpretation would assume that in any hierarchical structure, it is necessarily at the top and the bottom that rank envy and competition for power manifest themselves most. This is, however, beyond our scope. On rank envy in group dynamics cf. also Hofstätter 1957: 127f.

[21] MA p. 386 § 26.

[22] See p. 41.

[23] MA p. 656 § 9; also p. 655 § 3.

The problem of caste-internal status groups is not clarified by the MA, and it is only from the context that we learn of their existence. One example are the Rajput. On the one hand, the MA labels them *rajput jāt*, 'the caste of the Rajput' on the other hand, however, in various passages a distinction is made between a) *āphu mildā rajput*, 'Ego's equal Rajput [in status]', and b) *āphu bhandā kam rajput*, 'a Rajput ranking lower than Ego'.[25] Referred to are the two non-commensal status groups of the Ṭhakuri caste which have already been mentioned. At least in one instance,[26] the MA seems to term such a status group *jāt* also.

The difficulty lies in the polysemy of the term *jāt* in the Nepali language; Turner[27] gives for *jāt* the meanings 'sort', 'kind', 'tribe', 'nation' and 'caste'. This is clearly reflected in the MA, too, which speaks of the *newār jāt* in the sense of 'the ethnic group of the Newār' (which includes several castes);[28] of *cākar jāt*, 'the *jāt* of slaves/ servants'; and even of *wesyā jāt*, 'the *jāt* of the whores', alluding to the legal status of both.[29]

To sum up, the MA seems to employ the word *jāt* with four different meanings:

1. *jāt* denotes taxonomically distinct groups with differing status positions within the hierarchy. This becomes evident from names such as Upādhyaya, Rajput, Kasāi, Cyāme, etc, as well as from the sequence in which such groups are enumerated, and from their interrelations to other such groups. It is only with this meaning that *jāt* is rendered by 'caste' here. Let us stress once again that *jāt* does not necessarily correspond to a commensal unit, although both frequently coincide, and even less to an endogamous unit. This is important to note as, according to the common sense-definition, castes are basically endogamous and also commensal with regard to specific, purity-relevant sorts of food. It is most likely the Untouchables in the MA's hierarchy who are in compliance with this common sense-definition of caste, as the columns VI-IX in fig. 12 show.

2. *jāt* can mean, according to the context, a caste-internal status group which is not commensal with the other status group(s) of the same caste (*jāt* as defined in 1).

3. In some cases, *jāt* denotes an ethnically (culturally and linguistically) distinct group which can embrace several castes (*jāt* in the sense of 1).

4. Finally, *jāt* is used in the sense of legal status in general.

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[24] MA p. 660 § 6.

[25] MA p. 116 § 9; p. 655 § 2. The spelling fluctuates between *rajput* and *rajpūt*.

[26] MA p. 655 § 2; cf. also p. 653 § 1; and our fig. 7, case 7.

[27] Turner 1965: 213.

[28] Cf. below pp. 111-117 and MA p. 630f § 5; pp. 644-652.

[29] MA p. 574f. § 2-3, 6-7. The expressions such as *prajā jāt* or *muḍinyā jāt* mentioned above (p. 80f.) also denote legal status, but here in direct connection with one's caste membership.

We can thus conclude that, except for 3, perhaps, the term *jāt* always connotes legal status which, in turn, is closely connected with one's affiliation to a caste or caste group.

IX

THE VARṆA MODEL AND THE DIVISION OF LABOUR IN THE MULUKI AIN

> "... both the Gúrungs and Magars [...] have been adopted as Hindús. But [...] they have been denied the [holy] thread, and constituted a doubtful order [...], not Vaishya nor Shudra, but a something superior to both the latter—what I fancy it might puzzle the Shastrís to explain on Hindú principles." (Hodgson 1971: 39).

The four *varṇa* and the five caste groups

The MA paraphrases its hierarchy as often as not by the expression *cār warṇa chattis jāt*, lit. 'the four *varṇa* and the 36 castes'. The terms *brāhmaṇ (wrāhmaṇ)*, *kṣtriya (kṣatria)*, *vaiśya* and *śūdra (śudra, sudra)* also occur frequently as if the Code attempted to bring the four *varṇa* of the ancient Indian conception of society into unison with its own five caste groups.

As is known, the four *varṇa* comprise a) the *Brāhmaṇa* who study the Veda and perform sacrifices for the two *varṇa* below them; b) the *Kṣatriya*, the *varṇa* of the kings and warriors; c) the *Vaiśya* who are peasants, merchants and craftsmen; and d) the *Śūdra*, the lowest *varṇa*, whose duty is to serve the three superior *varṇa*. Brahmins, *Kṣatriya* and *Vaiśya* are "twice-born", i.e., wearers of the holy cord, whereas the *Śūdra* are not. This classification lacks the impure and untouchable groups which are outside the four *varṇa*.[1]

The aforementioned expression *cār warṇa chattis jāt* seems to be meant to denote the totality of the castes covered by the MA. The number 36 stands symbolically for the multitude of individual castes and certainly lacks empirical evidence. As a matter of fact, even the castes (within or outside the four *varṇa*) mentioned in the classical Indian sources already amount to hundreds.[2] In the MA itself, approximately 70 names of different castes and groups can be found. Apart from the possibility of 36 being the result of a multiplication of 4 (4 *varṇa*), one must raise the question whether the usage of this number can be traced back to Indian precedents. According to Mahapatra,[3] for example, in Orissa a total of 36 service castes had traditionally been recognised.

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[1] Cf., i.a., Kane 1974: 19-179; Lingat 1973: 30ff.; Rocher 1975; Dumont 1966: 93-103. On four-class systems in the Himalaya and Tibet cf. Allen 1973 and Macdonald 1971.

[2] Cf. Kane 1974: 50-69.

It is certain that in Nepal the expression *cār warṇa chattis jāt* and the reference to the *varṇa* in general are older than the MA. As to the Licchavi period, Wajrācārya[4] points at the occurrence of the names of the *varṇa* and the untouchable Caṇḍāla in the inscriptions. According to the material of the Bhāṣā Waṁśāwali, the *cār warṇa chattis jāt* has already been used in the Code of Jayasthiti Malla, dating from the late 14th century AD.[5] Later, it can be found in the laws of King Rām Śāh[6] of Gorkhā from the 16th century, in the sermons of King Prithwi Nārāyaṇ Śāh[7] and in numerous other documents of the early 19th century.[8] However, neither in these documents nor in the MA itself is the *varṇa* model consistently applied to the multitude of the castes.

Thus in two passages, the MA gives: *"wrāhmaṇ rajput kṣatri waiśya śudra (śūdra)"*;[9] whereas in another one we encounter the same enumeration, but there *kṣatriya* is written instead of *kṣatri.*[10]

Who is seen as belonging to the *varṇa* of *brāhmaṇ?* Usually the MA calls *brāhmaṇ (wrāhmaṇ)* the Upādhyaya Brahmins, the *asal* Jaisi, the Dew Bhāju (Dew Brāhmaṇ) of the Newār, as well as the various Brahmins of India and the Terai; whereas the "lower Jaisi", namely the Jumli Jaisi, the Doṭiyāl Jaisi and the *tin liṅga dekhiko* Jaisi[11] are obviously excluded and are not mentioned as *brāhmaṇ.* It is important to note that the privileges and tasks the classical authors assigned to the *varṇa* of the Brahmins are not confirmed by the MA for all the castes it labels *brāhmaṇ.* The positions as spiritual teacher and priest invested with the "sacrament of initiation" *(mantra sunāunu, dikṣā dinu)* are exclusively reserved for the Upādhyaya. The Jaisi are forbidden to claim the Upādhyaya's privileges and to act as priests on behalf of any caste other than their own.[12]

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[3] Mahapatra n.d.: 5.

[4] Wajrācārya 2030: 29. According to the author, in the Licchavi period the idiom "4 *warṇa* 18 [instead of 36] *jāt*" probably prevailed.

[5] Laṁsāl 2023: 37f., 45f.; cf. also below pp. 175-177.

[6] MA (annex) p. 700.

[7] Diwya Upadeś 2025: 28f.; here by mistake 36 *warṇa* and 4 *jāt*.

[8] Nepāli 2020: 123ff.; Nepāli 2022: 203; Bista 1972 a: 19.

[9] MA p. 405 § 70, p. 573 § 6. The spelling of these names shows some degree of fluctuation throughout the text of the MA: *rajput/rajpūt; kṣatriya/kṣetriya/kṣatri/kṣetri; waisya/waiśya; śudra/śūdra/sudra.*

[10] MA p. 629 § 2.

[11] Cf. below p. 107. *tin liṅga dekhiko jaisi*, lit. 'the Jaisi of three or more penises' = ? those Jaisi whose mothers were previously married to three or more men (cf. p. 51).

[12] On the Brahmins in general see MA p. 468 § 3, p. 653f. § 1, 3-4; on the Jaisi MA p. 537 § 1, p. 588 § 5, p. 602 § 1, p. 603 § 3, p. 653f. § 2; on the Upādhyaya and their privileges MA p. 404f. § 69, p. 391 § 44, p. 392 § 45. The taboo on killing a Brahmin is applicable to all castes with the appellation *brāhmaṇ*, notwithstanding the privileged position of the Upādhyaya. It seems that Upādhyaya Brahmins were also exempted from corvée in public works; this is suggested by a

We see that in the passages of the MA quoted above, five groups (instead of four) are mentioned, and that there is a fluctuation between *kṣatri* and *kṣatriya*. The word *rajput* usually stands for a separate caste, namely the Ṭhakuri, and *kṣatri* is the traditional spelling for Chetri, likewise a separate caste, as we have seen. Is the adding of *rajput* to the names of the four *varṇa* a sort of rhetoric manipulation to make plain that not only the Chetri but also the Ṭhakuri are recognised as *kṣatriya?* Or is the coalescence of *rajput* and *kṣatri(ya)* to be regarded as idiomatic?[13]

Bista[14] explicitly classifies the Ṭhakuri and Chetri as one *varṇa*, namely *kṣatriya*, and also as one caste. The MA is in contrast with the latter statement and treats both as two separate castes *(jāt)* (cf. p. 9). Obviously, one of the reasons for the legislator's 'inserting' the Ṭhakuri is to be sought in the aim to avoid any confusion or dispute that the etymology Chetri < *kṣatri(ya)* might have caused. On the other hand, not even the Chetri caste's allotment to the *kṣatriya varṇa* was self-evident, since in Western Nepal, in the region of Jumlā and along the upper course of the river Seti, there is a group with the name of *matwāli* Chetri. In contradistinction to the Chetri proper, the *matwāli* Chetri do not wear the holy cord and as their specification *matwāli* indicates, they partake of alcohol.[15] We do not know since when they have called themselves Chetri, and to my knowledge the MA does not mention them. From the fact, however, that the legislator conspicuously labels the Chetri proper *tāgādhāri* (whereas the Brahmins or the Rajput do not have this adjective when mentioned as individual castes), it may be concluded that there was a need to clearly distinguish between two kinds of Chetri. Of particular interest is a passage in the MA,[16] decreeing that from now on the Khas who wear the holy cord, are called Chetri and are allowed to add this caste name to their names in official documents.

The question as to which castes are classified as *vaiśya* in the MA remains unanswered. Do those lower-ranking "Cord-Wearers" belong to this *varṇa* whom the MA does not recognise as *brāhmaṇ* and *kṣatri(ya)*, such as the "lower Jaisi'"or the ascetics? The denotation *vaiśya* would presumably not even apply to those Newār castes who live on business and/or trade; although some of them wear the holy

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document *(rukkā)* dating from Bhimsen Thāpā's time: *jhārā garī upādhyā brāhmaṇ bāhik duniñā cāraiwarṇa chattisai jātle* [...], cf. Śāhkālin Aitihāsik Ciṭṭhipatra Saṁgraha 2023: 92. The MA is silent on this, as far as I can see.—On the Brahmins in ancient India cf. also Kane 1974: 138-153; Lingat 1973: 40, 218f.

[13] According to Wajrācārya (2030: 29), in the inscriptions of the Licchavi period the second *varṇa* figures as *rājaputra-kṣatriya*. After all, the *kṣatriya* are the *varṇa* of the kings *(rājā)* and warriors.

[14] Bista 1972 a: 16, 26-30.

[15] Fürer-Haimendorf 1971: 19ff.; Sharma 1971; Jest 1974: 250.

[16] *aba uprānta tāgādhāri khas jāt bhanyā [bhannyā] ilakāp [=?] waksī yo kāgajpatra harūma lekhnu pardā pailhe nāu lekhi unko thar lekhnu wāhā pachi kṣatri bhanyā ilakāp lekhnu*, MA p. 393 § 50. That is, in writing one's full name the first name and the name of one's *thar* (group of clans) should be followed by the caste name *kṣatri*. (Cf. also p. 154). Bista (1972 a: 16) is of the opinion that in the early 19th century the appellation *kṣatri* was monopolised by the Ṭhakuri, the Rajput of the MA.

cord (as it behoves the *vaiśya*), the MA does not deem them "genuine Cord-Wearers" because they partake of alcohol.[17] According to Bāburām Ācārya,[18] in Nepal there were *vaiśya* in the times subsequent to the conquest of the Kāṭhmāṇḍu Valley; the Magar also wanted to consider themselves *vaiśya*, but the Brahmins put them in the ranks of the *śūdra*.

By *śūdra (śudra, sudra)* the MA means those castes in the middle of the hierarchy who do not wear the holy cord and who therefore cannot be classified as *vaiśya*, although they mainly live on farming. In a number of passages the MA makes mention of the *matwāli śudra*, *namāsinyā śudra* and the *pāni calnyā śudra*. This shows that the "Non-enslavable Alcohol-Drinkers" are assigned to the *śūdra varṇa*.[19] The caste group of the "Enslavable Alcohol-Drinkers" is also likely to belong to the *śūdra*, for in one passage[20] a distinction is made between *namāsinyā śudra* (non-enslavable) and *māsinyā śudra* (enslavable).

Consequently, the impure castes ("Water-Unacceptable") are not considered *śudra*, although they embrace a number of service and craftsmen's castes. Obviously they are implied in the "36 *jāt*", a metonymical figure for the multitude of individual castes both within and outside the four *varṇa*[21].

From what has hitherto been discussed the following tentative assignment scheme can be deduced:

varṇa:	caste or caste group in the MA:
Brāhmaṇa	Upādhyaya Brahmin
Kṣatriya	Rajput, Chetri
Vaiśya	?
Śūdra	"Non-enslavable Alcohol-Drinker"
	"Enslavable Alcohol-Drinker"
_	impure castes

Thus the *cār warṇa chattis jāt* turns out to be a euphemistic metonymy, by which, on the one hand, the totality of the hierarchy (including the impure castes) is designated and, on the other, the claim of orthodoxy of the MA is emphasised.

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[17] Cf. below pp. 111-117. In present-day India, *vaiśya* is rather used in the sense of 'merchant', 'merchant caste' (cf. Dumont 1966: 93).

[18] Ācārya 2022: 129f.

[19] MA p. 115 § 9, p. 212 § 1, p. 281 § 4, p. 405 § 70, p. 412 § 17, p. 532f. § 3, 7, i.a.

[20] MA p. 600 § 16. The denotation *māsinyā śudra* seems to be identical in meaning with *māsinyā prajā*, cf. p. 82.

[21] It is a positive fact that many attributes of the *śūdra* of the classical sources anticipate untouchability. Moreover, there are certain indications of the probability that some of the present-day Untouchables stem from a section of the *śūdra*. According to Kane (1974: 121f.), ancient Indian works often divided the *śūdra* into two groups, namely the *aniravāsita*, craftsmen, and the *niravāsita*, such as the Caṇḍāla, who clearly exhibit the attributes of untouchability. This bipartition seems to be closely paralleled by the distinction between "clean *śūdra*" and

This claim amounts to a more or less rhetorical reference to the classical authority of the *dharmaśāstra* literature, for the *varṇa* concept as a whole remains without specific substance for the five caste groups of Nepal.

Let us add that in ancient India, too, the four *varṇa* seem to have had a rather normative or orientative function. Lingat, for instance, holds that the four *varṇa* should be understood as a theory or model of the social reality of those times.[22] At least it is a positive fact that even the classical authors had to harmonise empirical reality with the four *varṇa* by claiming that the numerous individual castes of their times have originated from intermarriages between members of different *varṇa*.[23] Present-day perception of society in India also reverts to the model by identifying certain clusters of castes *(jāti)* with certain *varṇa*, in spite of the incongruities such operations necessarily involve.[24]

The division of labour

Here the discrepancy between the *varṇa* model and the hierarchy of the MA again becomes visible. Apart from the legally sanctioned and privileged function of the Brahmins as spiritual teachers and priests, the MA, unlike the preceptors of the *varṇa* system, does not make the pursuit of a handicraft, trade or agriculture dependent on one's caste affiliation. Thus the MA explicitly states:[25]

> *"ilam bhanyāko jāt jātko chaina. cār warṇa chattisai jāt sawaile. pāin hālnu juttā kapaḍā syuna khāni khaṁna sun dhuna awālmā āgo lāunu kumhālko kām garna mādalharūmā khari lagāunu gairha sawai kāmko ilam garna wec wikhan gari jiwikā garna huṁcha. jāt jādaina ..."*

That is: "Occupation *(ilam)* is not governed by caste [membership]. [The members of] all four *varṇa* and 36 *jāt* are allowed to sharpen tools [the smith's trade], to sew shoes and clothes, to work in mines, to wash gold, to fire brick-kilns *(awāl)*, to pursue the potter's *(kumhāl)* trade, to prepare leather for the *mādal* drums and to pursue all other works as an occupation, to work in commerce *(bec-bikhan)*, thus earning their living; nobody is deprived of his caste status."

"unclean *śūdra*" in present-day India; a twice-born is allowed to accept water only from a "clean *śūdra*" (cf. Mandelbaum 1970, I:26). Although the MA neither employs similar terms nor a similar dichotomy, the parallels are outstanding, and one is tempted to compare the two caste groups of "Alcohol-Drinkers" to those "clean *śūdra*", on the one hand, and the impure touchable castes to the "unclean *śūdra*" on the other.

[22] Lingat 1973: 29f.; whereas for Kane (1974: 47f.), the *varṇa* hierarchy corresponds to the social reality.

[23] Cf. Kane 1974: 50-69; Kane (1962: 1632) writes: "Sometimes *jāti* and *varṇa* are differentiated in the Smṛtis [...] but from ancient times the word *jāti* is confounded with the word *varṇa*".

[24] Cf. Mandelbaum 1970, I: 22-27, 213ff. and Srinivas 1966: 2-10.

[25] MA p. 155 § 7. In MA p. 154 § 1 we read that anyone who has undergone the appropriate training is allowed to work as a goldsmith and silversmith.

This passage is all the more remarkable as here some occupations are enumerated which are pursued by impure castes, such as leather-work (Sārki, Kulu), tailoring (Damāi) and the trade of the blacksmith (Kāmi). Still more surprising is the paragraph[26] decreeing that the Rajput and the Newār of the Kāṭhmāṇḍu Valley *(tin saharkā newār)* and even the Brahmins (both Upādhyaya and Jaisi) are allowed to plough! In reality, however, even nowadays the Newār of the Valley and most of the Brahmin peasants in the hills do not plough.[27]

This "liberality" is in fundamental contrast to the attributionistic view, according to which the gradation of caste-specific purity is connected with a specific division of labour. It is in particular contrast to the *varṇa* model, where status is a direct function of the "mode of life" *(jīvikā)*. According to Manu, a Brahmin may plough only in case of emergency and, what is more, if he does so he will temporarily become a Vaiśya. Even a Kṣatriya is advised to avoid agricultural activities.[28] As we have seen, the MA is more liberal in as much as it explicitly states that some professions (occupations) are not susceptible to impurity and that accordingly a physician, carpenter, washerman, etc, may go on pursuing his work even if he is impure due to a death or childbirth in his family.[29]

However, the liberality with reference to the choice of profession and occupation is limited by some other regulations of the MA. Thus it is laid down that orphans having no near relatives and no property have to undergo a vocational training and education corresponding to their caste affiliation. As far as can be concluded from the context, such orphans of the *jāt (varṇa)* of *"wrāhmaṇ, kṣatriya, waiśya"* should receive a basic education in writing and reading *(lekhpaḍh)*; *śudra* children, however, have to be trained in manual work in public institutions.[30]

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[26] MA p. 154 § 5.

[27] In my observation in Central Nepal, not all Brahmins stick to the taboo on ploughing. Stone (1977: 110) reports the contrary from an adjacent area in the Trisuli Valley: Brahmins generally refrain from ploughing. On the absence of plough among the Newār cf. Nepali 1965: 42-44.

[28] Rocher 1975: 148; cf. also Kane 1974: 124ff. For Dumont (1966: 127) agriculture is, with regard to the post-classical caste system in India, a ritually neutral occupation. As the Pālī texts clearly testify, Brahmin cultivators were not uncommon in the Buddha's time (Fick 1897: 156ff.).

[29] MA p. 437 § 46. Cf. also above p. 66.

[30] MA p. 155f. § 11.

X

CASTE AND SOCIAL ESTATE: SLAVES AND ASCETICS

Are there any other status dimensions in the society of the MA besides the castes? And if so, to what extent are they related to the castes or to what extent do they represent, so to speak, casteless realms? Is there any other hierarchy than that of the castes?

It is obvious that the MA, as a legal code, does not provide much information on the existence of classes of the Nepalese society of that time,—at least if one defines 'class' in the Marxian or Weberian sense.[1] Things seem to be different with what I would call estates (états), that is, groups vested with specific statutory privileges or disabilities and in which membership is not necessarily determined by birth and/or by the observance of rules meant for maintaining a certain "standard of purity" as in the case of castes. The term 'estate' is used here in the sense of the états (nobility, clergy, commons) in prerevolutionary France, though not as a notion merely of constitutional law.

Leach and Dumont rightly oppose Max Weber, who saw in caste only an extreme form of the closed estate *(geschlossener Stand)*.[2] Weber conceded a mere additive function to the Hindu ideology with its purity concept, believing that estates "proper" *(Stände im vollen Sinn)* were only the castes of the Muslims who, unlike the Hindus, had no commensality taboos among themselves.[3] Recently, Rothermund has distinguished between castes, classes and estates. For him caste is a concept of cultural order, class (landowners, landless labourers, etc) a concept of social stratification, and estate (feudal lords, peasants, etc) a concept of social order. As to the latter, it is the Weberian *Stand* the author has in mind rather than estate as a group with distinct legal status.[4] Kantowsky points to three status dimensions that exist besides the caste, namely that of property, occupation and education.[5] Béteille distinguishes between hierarchical status (caste) and politico-economical status[6].

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[1] i.e., as an only objectivistically definable group characterised by the degree of access to economic power.

[2] Cf. Leach 1962: 4-6, Dumont 1966: 305-323 and Weber 1972: 41-49.

[3] Weber 1972: 132. On the Weberian interpretation of *Stand* and class cf. also the useful summary given by Bendix 1962: 85-87.

Abstracting from the specifically Indian ideology and employing mere structural criteria, the *varṇa* are estates as well as classes. The affiliation to a *varṇa* is hereditary, yet it is in principle determined by the individual's occupation (cf. p. 88). Thus the material privileges of the higher *varṇa* are guaranteed: The Brahmins are exempt from tax-paying and are by writ entitled to receive donations from their clients; moreover, they are also allowed to be active in certain sectors of commercial life. The Śūdra, by contrast, have to serve the three higher *varṇa* in the fields of agriculture, handicraft and entertainment. Manu even enjoins the Śūdra not to accumulate riches.[7]

The MA knows no term adequate to our 'estate' (or even 'class'[8]), and its material certainly does not suffice to render estates clearly discernible. I rather doubt that there was ever any systematic categorisation of such social orders in Nepal. Even in our day, the usual mentioning of "military and civil persons, officials, merchants, ascetics and members of the panchayat councils" in royal addresses is a rhetorical figure rather than the enumeration of legally sanctioned estates.

There seem to be about five groups in the MA, which deserve to be discussed: a) *bhārādār*, roughly 'high nobility'; b) assignees of revenue and certain office-holders; c) *duniyā̃ (duñiā)*, i.e., 'commoners'; d) *cākar*, i.e., 'the serviceables', including the slaves *(kamārā)*; and e) the ascetics *(sannyāsi, wānaprastha)*. The group whose legal status is described in the most detailed manner are the slaves, followed by the ascetics.

To the *bhārādār* belonged the royal collaterals *(cautāriya)* of the Śāh clan of the Ṭhakuri caste and, after the Rāṇā take-over, the closer relatives of the Rāṇā prime minister.[10] As the list of the signers in the preamble to the MA suggests,[11] the *bhārādār* were members by birth of the highest legislative and judicial body, the

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[4] Rothermund 1976: 395ff.

[5] Kantowsky 1970.

[6] Béteille 1974: 290ff.; also Berreman 1963: 210f. and Berreman 1971: 19ff.; Gardner 1968.

[7] Cf. Kane 1974: 138-153.

[8] Even in modern usage the word *barg* is employed with different meanings, sometimes as a euphemism for 'caste', sometimes in the sense of 'social stratum', and most often in connection with the so-called Class Organisations *(bargiya saṅgaṭhan)* of the present political system: the Workers', Youth's, Women's, Peasants', ex-Servicemen's and Graduates' Organisations. On the Class Organisations cf. Kaphley 1967: 226ff.; Anonymus 1970: 42ff.; Joshi and Rose 1966: 406ff., and Gaige 1975: 137.

[9] *jaṅgi, nijāmati, karmacāri, sāhu-mahājan, sādhu-mahant, pañcaharu.*

[10] Cf., i.a., Hodgson 1880, II: 213, 224; Edwards 1975: 100-104; and the glosses given in Turner (1965: 475) and Śarmā (2019: 787).

[11] Cf. above p. 5. Similarly Lévi 1905, I: 289.

bhārādāri kausal; another section of the members was recruited from among the civil servants, whose appointment was revocable.

The MA does not contain statutory regulations with regard to what we would call aristocracy. We know that the political elite of Nepal was recruited from the high castes, the Ṭhakuri, Brahmins and Chetri. Their configuration, however, underwent constant changes. This was partly caused by the well-known historical events, but also by lack of constitutional continuity. Moreover, investments with real estate (and other rights of ownership) could practically be rescinded at any time.[12] Since there was no institutional framework for safeguarding its material basis, a social estate comparable to Europe's hereditary nobility could not emerge.

There is nothing corresponding to our clergy. Only few Brahmins were employed at court as performers of the state cult or as advisers to the *bhārādāri kausal*. If we are entitled at all to speak of a 'priestly estate', this is, then, co-extensive with the caste of the Upādhyaya Brahmins.

The ascetics are renouncers originating from the "Cord-Wearer" castes and their descendants, as well as members of diverse sects who are ranked as separate castes within the caste group of the "Cord-Wearers".

There seem to be two intermediate ranks between the *bhārādār* and the *duniyā̃*. These are the privileged assignees of revenue, on the one hand, and certain agents, on the other. The former are mostly holders of landownership rights (*birtā*, etc), the latter the agents of these right-holders or of the State, such as the village headmen and revenue-collectors (*mukhiyā*, *jimmāwāl*, *ṭalsiṅg*, etc). The *duniyā̃* are all those whom one could consider tenants either of the State or of the assignees of revenue. More precisely, the *duniyā̃* seem to consist mainly of share-holders or cultivators (*mohi*, *raiti*, *kuriyā)* with certain occupancy rights a) on land directly owned by the State (*raikaṛ* tenure); b) on land assigned to a privileged person or institution (*birtā*, *guṭhi*, *jāgir*, etc, tenures); and c) on land owned by the community (*kipaṭ* tenure).[13] As we shall see later, the form of tenancy is decisive for one's legal status in that the assignees and the state agents also exercise judiciary power over their tenants.[14]

As the context suggests, the word *duniyā̃*, on the one hand, and *prajā* ('subject') or *rāyat/raiti* ('subject', 'tenant'), on the other, are used in the MA as alternatives.[15] Consequently, the group of the *māsinyā prajā*, the "enslavable subjects", as discussed above, seem to be a lower subdivision of the *duniyā̃*, namely those "freemen" who can be reduced to slavery. The upper subdivision would thus be identical to the *namāsinyā śudra*, the "non-enslavable *śudra*".[16] The particular position of the "enslavable subjects", i.e., the caste group of the "Enslavable Alcohol-Drinkers", is also revealed by the following regulation of the MA: Should a "Cord-Wearer" or a "Non-enslavable Alcohol-Drinker" die without legal heirs, his property devolves to the state; if, however, the deceased is an "Enslavable Alcohol-Drinker", the property will be conveyed to the owner *(dhani)* of that land *(guṭhi, birtā, māphi jaggā)*, on which he had been working as a tenant *(raiti, kuriyā)*.[17] As we see, the peasantry is not represented as a single body.

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[12] Cf. Regmi 1975: 103-106; Edwards 1975: 100-104; Kumar 1967: 15-61.—Medium-ranking civil servants predominantly came from the Brahmin, Ṭhakuri and Chetri castes, but higher Newār castes were also represented among them. From the viewpoint of their recruitment, the lowest ranks of the elite were probably the most stable, since they were held by local dignitaries, such as the village headmen, revenue-collectors and the like, whose office was, once sanctioned by the State, mostly transmitted from father to son.

[13] Roughly compared to the Indian forms of tenure, *kipaṭ* corresponds to the mahalvari, *raikaṛ* to the ryotwari and *birtā* to the zamindari systems. For a summary of the different forms of land tenure in traditional Nepal cf. Regmi 1976: 16-21. It is Regmi's great merit to have shown that "in Nepal land has traditionally been considered to be the property of the state", and that the various forms of revenue-assignment represented a "relinquishment of its ownership rights by the state" (Regmi 1976: 16ff.).

[14] Cf. p. 179f.

Probably the free members of the impure castes are also considered as belonging to the *duniyā̃*, even though I do not find any clear indication of this.[18]

The next estate, the "serviceables", *cākar*, are divided into a) free servants who work for payment *(darmāhādār)* or for other gratification *(nokar)*; b) bond-servants *(bā̃dhā* or *wādhā* in the MA's spelling); and c) slaves *(kamārā)*. The partial overlapping of their legal statuses is proved by the MA prescribing that servants, bond-servants and slaves be equally punished if they have struck their masters.[19]

The following tentative diagram shows the possible co-extensions between estate and caste:

bhārādār	Ṭhakuri, Chetri
"assignees"	mainly "Cord-Wearers", also "Non-enslavable Alcohol-Drinkers"
duniyā̃	virtually all castes (?)
cākar	mainly "Enslavable Alcohol-Drinkers" and impure castes
ascetics	mainly "Cord-Wearers"

Slaves and bond-servants

With regard to the history of slavery in Nepal, suffice it to give a summary of the main points. Sen and Regmi[20] emphasise that during the 19th century there was a great demand for slaves in Nepal, and that this was due to the pressing need for cheap manpower in the wake of the wars with the British and with Tibet. The great majority of slaves was, without any doubt, recruited from the ethnic groups, such as the Bhoṭyā, Awaliya and the Kirãti. In fact, these members of the caste group "Enslavable Alcohol-Drinker" were the *prajā*, the dependent peasants of the higher castes. A large number of impure caste members must also have been represented among the slaves.[21] In some areas slavery must have had downright disastrous effects. There is no other explanation of the fact that, as early as in BS 1865 (= 1808, i.e., 46 years prior to the MA), a document prohibits the Bhoṭyā from selling their own daughters.[22] In BS 1893 (= 1836) the same interdiction was enounced vis-à-vis the Magar of Piuṭhān.[23] In AD 1861 the Limbu (Kirãti), who had still been classified by the MA as an enslavable caste, were emancipated from their enslavability in recognition of their services in the war against Tibet.[24] The British Resident in Nepal reported in 1877 that enslavability had been abolished for all pure castes, that is, obviously for those hitherto classified as "Enslavable Alcohol-Drinkers".[25] Landon, who outlines the antecedents of the abolition of slavery in 1924, points out that Jaṅg Bahādur and, in later times, Prime Minister Dew Śamśer already tried to control slavery.[26] It is certain that fresh recruitments to slavery were prohibited well before 1924.[27]

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[15] Cf. MA p. 33 § 55, p. 47 § 3, p. 52f. § 3, pp. 80-83, p. 270 § 16-19; also Śarmā 2019: 515 *(duniyā̃dār)*. On the meaning of *mohi* and *rāyat* (ryot) see also Regmi 1976: 170ff.

[16] Cf. p. 91; and MA p. 545f. § 11, 14, p. 674 § 2, p. 692 § 1.

[17] MA p. 145 § 32.—*guṭhi* is an unalienable and tax-free bequest of land to religious or charitable institutions. *birtā* is the bestowing of ownership rights on an individual; the rights mostly referred to land, in some cases, however, only to the benefit of income (yield, rent, taxes, etc). During the Rāṇā time, *birtā* rights were preferably conferred as a hereditary privilege. Cf. Regmi 1964, II: 1ff., 28ff., 42ff.; Regmi 1976: 22ff., 46ff.; *māphi*, lit. 'exempt' (from taxes).

[18] Cf., for example, MA p. 270 § 19.

[19] MA p. 270 § 16.

[20] Sen 1973: 161ff.; Regmi 1971: 101ff., 196ff. On a somewhat different system, which the author calls quasi-slavery, in Malnad in South India cf. Harper 1968.

The MA distinguishes between *kamāro*, "full slaves", and *bãdhā (wādhā)*, "debt-slaves" or bond-servants. Freed "full slaves" are called *amlekh* or *gharti*; and if such freemen remain in their master's service, they are called *khawās*.

The legal status of the slaves and bond-servants can only be summarised here, for the thirty pages dealing with them in the MA[28] would suffice for a separate study.[29]

The MA[30] places slaves and bond-servants under the legal and administrative control of the State. Prices are fixed according to the age and sex of the slave; all transactions must be registered officially; and the master's duty to maintain his slave or bond-servant is settled. It is also laid down that a slave driven away on account of illness is to be regarded as a freeman.[31] The prosecution of a slave is within the responsibilities of the State, and the master is entitled to redeem his slave from prison or to claim him as his personal property when the slave has served his term.[32] In case of disobedience and escape the slave is protected by the state authorities against his master's discretion.[33] A female slave can only be separated from her child when it is more than 11 years old.[34] There are other regulations which deal with the sale of orphans and prohibit the sale of one's own child or of one's own wife, even if she has become *besyā* or has been degraded in her caste status.[35]

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[21] Cf. Regmi 1961: 313f.—It is hardly surprising that Turner (1965: 75) renders the word *bhoṭe (bhoṭyā)* as synonym of *kamāro*, 'slave'.

[22] Naraharināth 2013, II, 2: 19.

[23] Nepāli 2022: 191.

[24] Regmi 1965, III: 89. On this cf. also Rāṇā and Wajrācārya 2029: 35f.

[25] Sen 1973: 163.

[26] Landon 1928, II: 163ff. Cf. also Northey and Morris 1928: 105-113.

[27] Rana 1925: 55f. Cf. also MA 2009, III, p. 164ff. on the consequences of the general slave emancipation in 1924 (BS 1982).

[28] MA p. 140 § 10-12; p. 349-368, p. 680 § 15-16, p. 682-691.

[29] Dr Prayag Raj Sharma and I hope to publish such a study in the near future.

[30] MA p. 363ff.

[31] MA p. 366 § 5.

There is a clear-cut difference between slaves ("full slaves") and bond-servants. Unlike the slave, the bond-servant cannot be assigned to somebody other than to the creditor.[36] Parents cannot compel their children to become bond-servants in lieu of themselves.[37] Bond-servitude expires after the debt has been paid off either in work or in cash; it also expires if the debtor dies before the liquidation of the debt. In the latter case the creditor is not allowed to revert to members of the debtor's family in his stead.[38] Moreover, bond-servitude must not be converted into full slavery.[39] It is also laid down that the bond-servant pays off only the capital of his debt, and not the interest.[40]

From the relevant passages of the MA it can be seen that Nepalese law recognises what was called in ancient Rome the *contubernium* and *peculium*: slaves are allowed to marry among themselves *(contubernium)*, to possess, inherit and bequeath property and cash *(peculium)*. They are in a position to set up for themselves and even to pay taxes.[41]

Slaves, bond-servants and also free servants have positive bonds to their master's families. If their master or mistress dies the slaves must observe the total number of mourning days *(purā juṭho)* as if they belonged to the deceased person's nearest relations. Bond-servants and free servants, however, must observe only three days.[42] The MA forbids a custom which had obviously existed hitherto, namely that when queens or wives of high-ranking officials were cremated some of their female slaves and servants were also sent to the funeral pyre.[43] No mention is made of whether slaves and servants have to be degraded if their master undergoes a degradation. At least in the era prior to the MA, this custom must have prevailed. When, for example, after King Raṇa Bahādur Śāh's assassination two high dignitaries were executed, their families were, together with their slaves, "handed over" to the Untouchables.[44] There are also some indications of the slaves' and bond-servants' duty to accompany their master to the battlefield.[45]

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[32] MA p. 412 § 17-18.
[33] MA p. 350f. § 7, 11.
[34] MA p. 362 § 2-4.
[35] MA p. 364f. § 2, 5.
[36] MA p. 350 § 8.
[37] MA p. 353 § 7.
[38] MA p. 357 § 6.
[39] MA p. 355 § 1, p. 435 § 30.
[40] MA p. 350 § 8; cf. also Nepāli 2022: 187.
[41] MA p. 357 § 8, p. 474 § 4, p. 341 § 10, p. 140 § 10-12 (in order of reference).
[42] MA p. 435 § 30. Cf. also above p. 65.
[43] MA p. 421 § 5.
[44] Wajrācārya n.d. b: 354.

The offspring of a male slave remain slaves. Children stemming from a union between a free man and a female slave can be adopted, if the father so desires, and can thus attain their father's caste status.[46] Such a slave wife married to a freeman is even allowed to practise suttee, provided that she is deemed *kanyā*, i.e., married as a virgo intacta.[47] This provision shows that the gradation of the feme's status is also effective with regard to slaves. This leads us to the question: do slaves have a caste affiliation?

There are passages in the MA where slaves occur as if they formed a separate caste or caste group. For instance, they occur in the following enumeration: "Cord-Wearer"—"Non-enslavable Alcohol-Drinker"—"Enslavable Alcohol-Drinker"—slaves *(kamāro)*.[48] By other passages, however, it is clearly proved that the slaves do not lose the caste status they, or their forefathers, had had before they were enslaved. The fact that they are mentioned separately is only due to their specific legal status as slaves. Bond-servants also retain their caste status.[49]

First of all, let us stress that enslavement can come about in two ways: either through sale or as a penal consequence. Slaves enslaved in consequence of a criminal offence are treated as state property. Slaves already freed can again be enslaved if they incur a penalty; non-released slaves, however, are imprisoned in such a case.[50] As to the caste of the slaves, the following distinction can be made:

a) Only the *māsinyā*, i.e., the members of the "Enslavable Alcohol-Drinker" caste group and the impure castes can be punished by enslavement. For exactly the same offence persons belonging to the higher, non-enslavable castes are punished by degradation, imprisonment, capital punishment, etc.

b) However, members of all caste groups can be reduced to slavery by sale or become bond-servants. In several instances mention is made of slaves coming from the caste groups of the "Cord-Wearer" and the "Non-enslavable Alcohol-Drinker". The MA even speaks of Brahmin slaves.[51] Possibly, the bulk of such "Cord-Wearer" slaves are not freshly recruited ones, but the offspring of people who had been sold into slavery prior to the enactment of the MA. At least a document dating from as early as BS 1864 (=1807) forbids the inhabitants of Dulu to enslave Brahmins,[52] and according to Marc Gaborieau, the Ṭhakuri in Achāṁ were sold only until 1816.[53]

The term *māsinyā* "enslavable", thus refers only to penal enslavability from which the two highest caste groups are excluded. What is more, the MA lays down that even those "Cord-Wearers" and "Non-enslavable Alcohol-Drinkers" who have been degraded to the status of the "Enslavable Alcohol-Drinkers" cannot be punished by enslavement if they again incur a penalty. Only their children (born after the degradation) are regarded as liable to penal enslavement if they are found guilty of an offence punishable with enslavement.[54]

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[45] Cf. Gorkhā Waṁśāwali II: 15: "... *wā̃dhā kamārāsamet cār warṇa chattīsai jāt sab tayāri bhai* ...".

[46] MA p. 413 § 2, with reference to the case of a "Cord-Wearer" father.

[47] MA p. 422 § 12.

[48] MA p. 579f., p. 671 § 41.

[49] MA p. 680 § 15, 17.

[50] MA p. 368 § 7, p. 412 § 18, p. 682f. § 6, 8.

[51] MA p. 683 § 10.

[52] Naraharināth 2013, II, 2: 17.

[53] Personal communication.

This dichotomy has some parallels in the ancient Indian sources of law. According to Kane, some authors allow Brahmins or at least the Kṣatriya and the Vaiśya to be enslaved; others do not share this view. Manu declares that it is punishable to make a member of the three higher *varṇa* a slave against his will and after his investiture with the holy cord. The Arthaśāstra, which stipulates that no *ārya* be reduced to slavery, distinguishes between several types of slaves, i.e., prisoners of war, those who sell themselves, those who pledge themselves for a debt, the offspring of slaves, and those enslaved as criminals.[55]

The recruitment of slaves and bond-servants in the MA can be summarised as follows:

caste group	form of servitude
"Cord-Wearer" and "Non-enslavable Alcohol-Drinker"	bond-servitude and enslavement by sale only
"Enslavable Alcohol-Drinker" impure castes including Untouchables	bond-servitude and both: enslavement by sale or as a penal measure

As to the subsequent discussion, the following categories are to be distinguished:

bā̃dhā (wā̃dhā)	bond-servants	retain their original caste status
kamāro (kamārā)	slaves	retain their original caste status
khawās (khawāsyā)	freed slaves remaining in their master's services	are deemed as "Water-Acceptable" without further specification
gharti	freed slaves and their offspring	form a separate caste within the caste group "Enslavable Alcohol-Drinker" ("Water-Acceptable")

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[54] MA p. 360 § 17.
[55] Kane 1974: 180-187.

The interplay between legal status in general and caste status in particular is well illustrated by the interrelations between freemen and slaves. The rules clearly imply that slaves retain their, or their parents', caste affiliation, basically at least. In principle, the offences of a slave in connection with sexual intercourse and *bhāt* acceptance are punished just as those committed by freemen. In the case of slaves too, the disparities in caste status between the parties involved are taken into account. However, there are additional measures which become effective regardless of the slave's caste, thus proving the existence of a specific legal status of slaves.

Some examples in support of this:

A slave *(kamāro)* maintaining sexual relations with one of his master's female relatives can be killed. Such liaisons seem to be classified in principle as rape or violation *(jawarjasti)*. Unlike comparable relations between freemen, punishment is imposed on the slave irrespective of the status disparities between the partners and regardless of the feme's status and of whether the offence was committed by mutual consent or not.[56] Or: In the case of incest between two slaves, those provisions are applied which normally apply to the free *bhoṭyā prajā*.[57] Here it is abstracted from the offenders' caste and they are treated as if they were *bhoṭyā*, i.e., belonged to the "Enslavable Alcohol-Drinker" caste group.

Sexual intercourse between a slave and a free woman is judged differently if the latter does not belong to the family or household of the slave's master. In principle, however, such a case is also considered rape *(jawarjasti)*, and the punishment ranges from killing to imprisonment of variable duration. Aggravating are additional factual findings, such as a) the transgression of the demarcation line between pure and impure castes; or b) the transgression of the demarcation line between touchable and untouchable castes; c) the intercourse with a married woman; and d) a hypogamic union. The factual findings (a) and (b) entail the slave's degradation to the woman's caste status; in the case of (c) the husband is entitled to claim his right to kill his wife's seducer, etc.[58]

A cut above the slaves are the bond-servants *(bā̃dhā)*. The penal provisions for them follow the same criteria as are applicable to the slaves—the only difference being that the punishment is less severe. A bond-servant of one of the pure castes, for example, who has violated a major female relative of his creditor, has to reckon with an imprisonment of one and the half the duration he would have had to expect, according to the status disparities between him and the female partner, if he were a free man. The same principle of "adding one and a half more prison" *(ḍeḍho baḍhāi kaid garnu)* is applied in case the intercourse has been done by mutual consent *(rājikhusile)*.[59] (In both cases, a slave would be killed as we have seen.) If the bond-servant is of one of the impure touchable castes the punishment is life-imprisonment and degradation *(dāmal)*; and if he is an Untouchable he will be

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[56] MA p. 682 § 1.

[57] MA p. 682 § 2.

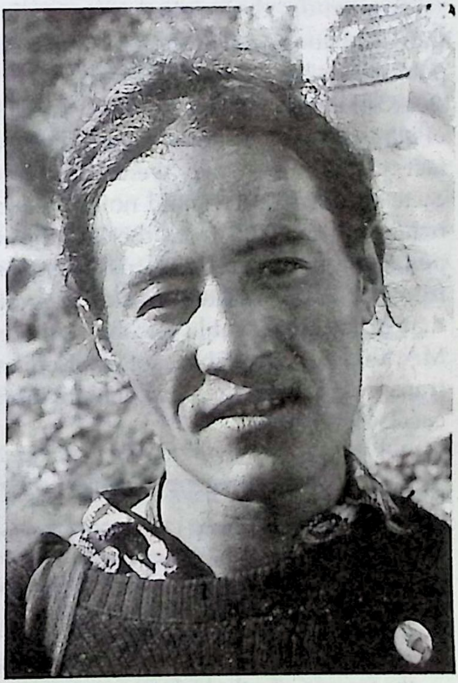
[58] MA pp. 683-689 § 22-27, cf. also MA p. 682ff. § 10-21, p. 376f. § 4, p. 668 § 4, p. 671 § 4, p. 680 § 15.

[59] MA p. 690 § 1.

9. Tāmāṅg and Chetri porters preparing their midday meal on the wayside, Central Nepal.

10. A Tāmāṅg girl with a rain-shield, Central Nepal.

11. A Thāru family, Terai.



12. A Tibetan man, Khumbu.

killed. In the two latter cases the legislator does not differentiate between rape and intercourse by mutual consent.[60]

An intermediate position between freemen and slaves is occupied by the *khawās (khawāsyā)*, i.e., those freed slaves who have remained in their master's service. The punishments briefly mentioned above with reference to the slaves apply to the *khawās*, too, as if they were slaves. While, as to their legal status, the *khawās* are treated as slaves it can be concluded from the context that, as to their caste status, the MA classifies them without any exceptions as "Water-Acceptable".[61] That is, the *khawās* belong to the category of the pure castes possibly irrespective of the lower, impure caste status some of them had before their emancipation (?). The same status is accorded to the *gharti*.

gharti or *pāryā gharti*[62] is the name given to those emancipated slaves who set up for themselves. Unlike the *khawās* the *gharti* is in no way subject to the legal status of a slave, and the MA adds that certain offences a *gharti* committed before his emancipation cannot be afterwards punished according to "slave law".[63] The *gharti* form a separate caste, called *Gharti*, within the pure caste group "Enslavable Alcohol-Drinker".[64] Although the MA fails to give details on the more precise status allocation of the Gharti, we may assume that they do not rank lower than the castes of the Bhoṭyā, Hāyu, Cepāṅg, Danuwār, etc, for they are allowed to marry women from these castes.[65]

To sum up, the original caste affiliation a slave had retained during his servitude is abandoned through his emancipation and replaced by a new one. Emancipation thus has a levelling effect in that for slaves stemming from the caste groups "Cord-Wearer" and "Non-enslavable Alcohol-Drinker" it brings about a decline of status. Perhaps such slaves cannot regain their former status on account of the fact that, as slaves, they were ordered to do all sorts of unclean work so that their caste-specific purity could not be guaranteed for.[66] The re-allocation of caste status seems to result from the fact that the legal status of the slave partially suspends his original caste status. The question is whether or not emancipated slaves from the impure castes are also promoted to the status of a pure caste, namely to that of an "Enslavable Alcohol-Drinker". In the light of the later edition of the MA, this is improbable: not even emancipation seems to offer an opportunity to transgress legally the tight demarcation line that exists between pure and impure castes.[67]

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[60] MA pp. 690-691 § 3, 5.

[61] MA pp. 682-689. Śarmā (2019: 220) gives for *khawās* 'servant doing manual work'.

[62] *pāryā*? < *pār*, 'separation' (emancipation).

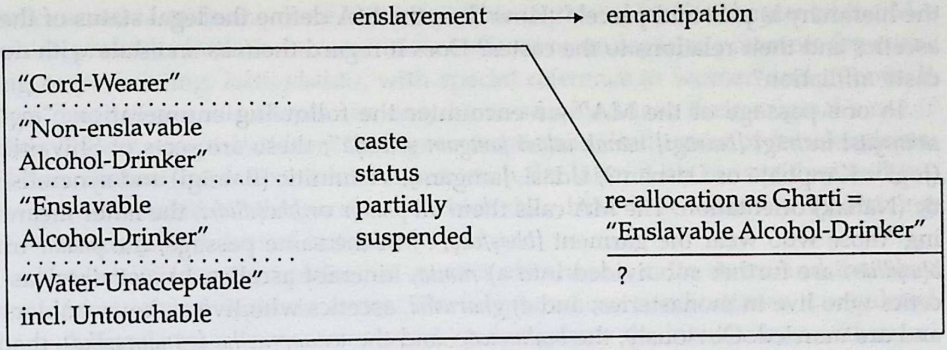
[63] MA p. 689 § 29; on the emancipation of slaves by way of adoption cf. MA p. 360f. § 19.

[64] MA p. 624 § 4, p. 360f. § 19, p. 689 § 29.

[65] MA p. 624 § 4.

[66] According to Manu and Nārada, slaves should in principle do unclean work, and this is one of the reasons why the higher *varṇa* are exempt from enslavement (Breloer 1928: 36f. and Kane 1974: 482f.).

[67] The later edition of the MA (2009, III, p. 164 § 1) discerns the Gharti as a "Water-Acceptable"


enslavement → emancipation
"Cord-Wearer"
"Non-enslavable Alcohol-Drinker"
"Enslavable Alcohol-Drinker"
"Water-Unacceptable" incl. Untouchable
caste status partially suspended
re-allocation as Gharti = "Enslavable Alcohol-Drinker"
?

We must add that some of the Gharti were even invested with the holy cord *(janai)* when in 1924 the general emancipation of slaves was proclaimed. This happened by order of the Government and, as Caplan reports, the Gharti in some parts of Western Nepal have since then been called Gharti-Chetri.[68] It is also important to note that at present the name Gharti is not solely applied to ex-slaves and their offspring. Gharti seem to be, at the same time, a reservoir for people of "notorious" origin, just as the Bhoṭyā of the MA represent a reservoir for degraded members of the caste groups "Cord-Wearer" and "Non-enslavable Alcohol-Drinker" (see pp. 124, 159f.). Among others, the issue of incestuous unions among the Guruṅg,[69] the issue from a hypogamous union between Tāmāṅg men and Brahmin or Chetri women,[70] and even children from a marriage between Guruṅg or Tāmāṅg men and Cepāṅg women[71] are called Gharti. A subgroup of the untouchable Kāmi also bears the name Gharti,[72] and finally there is a clan called Gharti among the Magar whom the MA classifies as "Non-enslavable Alcohol-Drinkers". Borgström notes that the genuine Gharti in Central Nepal have started calling themselves Magar and assumed Magar clan names, such as Thāpā, Bhujel or Gharti.[73] It would not be surprising if some of the people labelling themselves as Gharti turned out to be the descendants of ex-slaves of untouchable origin.

The ascetics

According to Dumont, the ascetic is outside the caste hierarchy as he renounces his innerwordly social role and thus transcends the innerwordly order of which

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caste from the emancipated slaves of the impure castes. Gaborieau's informants also denied this possibility of upward mobility (personal communication).

[68] Caplan 1974: 50, 59.

[69] Messerschmidt 1976: 116.

[70] My own observation.

[71] Jest 1966: 178.

[72] Bista 1972 b: 6, 65.

[73] Borgström 1976: 41f.

the hierarchy is part and parcel.[74] How does the MA define the legal status of the ascetics and their relations to the castes? Does it regard them as an estate with no caste affiliation?

In one passage of the MA[75] we encounter the following enumeration: "*jogī saṁnyāsi wairāgī [bairāgi] nānak udāsi jaṁgam sewaḍā*"; these are sects of Shivaitic (Jogi = Kānphāṭā or Dasnām?, Udāsi, Jaṁgam), Vishnuitic (Bairāgi) and syncretistic (Nānak) orientation. The MA calls them all *phakir* or *bheṣdhāri*, the latter meaning 'those who wear the garment *[bheṣ/veṣ]*'.[76] In the same passage, the *phakir* or *bheṣdhāri* are further subdivided into a) *ramtā*, itinerant ascetics; b) *maṭhdhāri*, ascetics who live in monasteries; and c) *gharwāri*, ascetics who live as householders and are married. Obviously, the *brahmacāri* and the *wānaprastha (vānaprastha)*, that is, those who only temporarily withdraw from wordly life, are also classified as *bheṣdhāri*.[77] Let us add that in some contexts the terms *jogi* and *sannyāsi* are employed in the wider sense of *bheṣdhāri*, instead of denoting a sect.

On the whole, the MA does not consistently distinguish between "genuine" ascetics and those who live a wedded life, whereby it seems to be proved that both belong to the same category. This may hang together with the fact that most of the ascetics are in different sects and that most of the sects have among their members both "genuine" ascetics living in celibacy and householder-ascetics along with their offspring who inherit their sect affiliation from their fathers.[78]

The restricted number of mourning days the ascetics have to observe already identifies them as people with a specific status.[79] The fact that they have to mourn their relatives shows that ascetics do not abandon all their relations to their families and kin, even though they lose their original caste status by virtue of their initiation. The loss of caste is clearly revealed by a passage which reads: "*newār jātkā lognyā phakir bhayo jāt dekhi patit bhayo bhanyā* ...", that is, 'if a Newār man becomes ascetic and loses his *jāt*'.[80] Here the term *patit* is used, which normally occurs in connection with degradation (see p. 158f.). Another parallel is that both the initiation of an ascetic and the degradation of a culprit are accompanied by shaving the head of the person concerned *(muṛnu)*.[81]

The loss of the original caste status does not, however, mean that the ascetic, once initiated, becomes "casteless". On the contrary, not even the "genuine" ascetics stand outside the caste hierarchy. This is proved by the chapter of the MA which prohibits initiation to asceticism by force or under false pretences (by coaxing or persuading, *lalāi, phakāi)*, with special reference to women and minors. It lays down that such adepts can only be re-admitted into their original caste if they did not accept *bhāt* from their *guru*-ascetic and, in the case of female adepts, if they did not have sexual intercourse with the latter. Otherwise "they will belong to that caste [of the *guru*] into which they have been admitted by shaving their heads [as a token of initiation]".[82]

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[74] Dumont 1966: 235-242, 324-350.

[75] MA p. 377 § 1.

[76] Reference is made to the specific dress, robe, etc, of the ascetics.

[77] MA p. 435f. § 33.—As is shown by Kane (1974: 923f., 928f.), the classical Indian authors initially distinguished between permanent ascetics, *saṁnyāsin*, and those who only temporarily withdraw from wordly life, following the four life phases *(āśrama)*, that is, the *brahmacārin* and the *vānaprastha*. Later on, this distinction became blurred, with the effect that *vānaprastha* and *saṁnyāsin* are nowadays used alternatively.

[78] Cf., i.a., Dumont 1966: 239f., 348 on India; and Caplan 1973: 174, 180, Bista 1972 b: 5, Burghart 1976 with reference to Nepal.

[79] MA p. 435f. § 33.

[80] MA p. 643 § 5.

[81] Cf. above p. 80 and MA p. 377 § 1.

The provision makes plain that ascetics also have a caste status and that they even form several separate castes. The adepts whose re-admittance is regulated here obviously stem from castes which, judging from the interdictions with reference to *bhāt* and sexual intercourse, have a higher status than that of the ascetics. We know, in fact, that the overwhelming majority, if not all, of the ascetics is recruited from among the highest castes of the "Cord-Wearer" group, such as the Brahmins, the Chetri, etc; and this tallies with the general situation in India.[83] The MA of BS 1910 is silent on the question as to which castes may adhere to ascetic sects and which not. Its later edition of BS 2009, however, forbids the initiation of members of the impure castes.[84]

As it stands, the MA classifies the ascetics as inferior "Cord-Wearers". In the usual enumerations of castes and caste groups, the ascetics rank above the "lower" Jaisi, who represent the lowest "Cord-Wearers". One such enumeration reads as follows: Upādhyaya—Rajput—asal Jaisi—Chetri—Dew Bhāju (Newār Brahmins)—Terhautyā (Brahmins from the Terai and North India) —Bhaṭṭ (North Indian Brahmins)—other Indian Brahmins—[and now the sects:] Dasnām—Jogi—Jaṅgam—Sannyāsi—Sewaḍā—Bairāgi—Kānphaṭṭā —Nānak—Udāsi—Baghar (Oghar/Waghar)—"and all the other ascetics" *(gairha bheṣdhāri)*—[followed by the "lower" Jaisi:] *tin liṅga dekhiko* Jaisi—Doṭiyāl Jaisi—Jumli Jaisi—[followed by the next caste group:] "Non-enslavable Alcohol-Drinker" ... etc.[85]

The ascetics' position as "Cord-Wearers" is also supported by ethnographic evidence. In Western Nepal, for example, ascetics avoid contact with Untouchables; their offspring mostly wear the holy cord; they marry among themselves or their women are married by Brahmins, Ṭhakuri and Chetri, and the children from the latter unions are regarded as Khatri Chetri.[86] Although the MA does not explicitly treat them as such, we know that some of the sects behave as separate castes.[87]

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[82] *"jaunā jātmā muḍiyākā hun uhi jāt huṅchan"* MA p. 378 § 5.—From the MA pp. 376-377 it emerges that nobody can be initiated without the consent of the relatives concerned (parents, husband, etc).

[83] According to some classical Indian sources, only Brahmins can become ascetics; other sources allow the members of the three higher *varṇa* to become initiated (Kane 1974: 923f., 942ff.). There is disagreement on whether the initiated ascetic may retain his holy cord or not (Kane 1974: 953ff.). As to the present situation in Northern India, Briggs (1938: 24, 26f.) believes that most of the sect members are from the "twice-born" castes, whereas Aggarwal (1971: 68ff.) reports that even Untouchables may become ascetics and thus promoted to the status of a "Touchable"; cf. also Mayer 1960: 26ff.

[84] MA 2009, V, p. 27 § 7.

[85] MA p. 653f. Similar enumerations in MA p. 468f. § 3-4 and p. 586ff. § 5. On the different sects see Ghurye 1964.

The MA mentions the following types of intermarriages: a) Unions between an ascetic *(jogi)* and an Upādhyaya or Jaisi widow who herself has become an ascetic *(jogi)*. Here the term *jogi* obviously refers to all sects.[88] b) Unions between an Upādhyaya or Jaisi (*asal* Jaisi) man and virgins or widows from one of the sects mentioned above. Children of such a couple are entitled to wear the holy cord and obtain the caste status of the mother with the additional "modifying" label *bhāṭ*. The text reads: '[they] will be *bhāṭ* of the mother's *jāt*'.[89]

We see that not even the ascetic is placed outside the hierarchy. He is not "caste-neutral" and is not allowed unrestricted intercourse with other castes. Nor is he a quasi-Untouchable on the margin of the hierarchy. Both would be incompatible with his paramount duty, his striving after purity, as it seems.[90] Here his factual provenance from the highest "Cord-Wearer" castes is of more or less secondary relevance. It may be added, however, that in some instances the ascetic's original caste affiliation is not entirely extinguished. Thus the MA deprives a cuckold husband of his right to kill the seducer of his wife *(jār hānnu)* if the latter is an ascetic *(jogi)* whose father or mother was born as Upādhyaya or Jaisi Brahmin; he is *awadhya*, "unkillable", just as a Brahmin is. To all other ascetics, who cannot claim descent from Brahmin parents, such a protection is denied.[91]

It might be surprising, at first sight, that the MA does not accord any specific privileges to the ascetics and that it rather treats them with suspicion by imposing a number of restrictions upon conversion of laics to ascetic sects[92] by declaring it punishable for an ascetic to usurp the privilege of the Upādhyaya Brahmins of the investiture with the holy cord,[93] or by admonishing the ascetics not to curse and not to assault laymen while begging, etc.[94] The main reason for this attitude lies in the unorthodox teaching, often amounting to syncretism, and non-conformist or even criminal practices of the sects which, initially at least, represented a challenge to Brahmin supremacy and the caste order.

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[86] Caplan 1973: 180f.; Caplan 1974: 43. On the Khatri cf. above p. 54f.

[87] Cf., i.a., Gaborieau 1969: 20. On the often vague position of the sects in the caste hierarchy in India cf. Mahar 1959: 142f.

[88] MA p. 636 § 29.

[89] "[...] *janmyāeko santān jaun bhes* [*bheṣ*] *ki swāsni rākhi* [...] *usai jātkā bhāṭ hunchan*" (MA p. 664 § 6). Interestingly, the sect *(bheṣ)* and the caste *(jāt)* are mentioned in the same breath.—On *bhāṭ* cf. above p. 51f. Śarmā (2019: 786) also gives for *bhāṭ*: 'offspring of a Brahmin man and a Sannyāsi woman.' In North India, the Bhāṭ are known as a caste claiming Brahmanical descent and status. They are astrologers, minstrels, genealogists and physicians (cf., i.a., Blunt 1969: 39, 285 and Sherring 1974: index).

[90] Cf. also Kane 1974: 933ff.

[91] MA p. 636 § 29. In the edicts of King Rām Śāh, all ascetics are declared *awadhya*, see p. 177 below.

[92] MA pp. 377-378.

[93] MA p. 390 § 36.

[94] MA p. 260 § 9.

In sum, the MA treats the ascetics as what they factually are. The initiation rites (burning of one's holy cord, the anticipated performance of one's funeral rites, etc) only underline that the caste into which one was born is abandoned. The fact that ascetics are commensal and even intermarry among themselves, irrespective of their original castes, may be regarded as a manifestation of the negation of the caste hierarchy. On the other hand, it is this commensality and partial endogamy which makes that the ascetics finally emerge as separate castes.[95]

It is a positive fact that neither the slaves nor the ascetics form a "casteless" status dimension. The boundaries of their estates coincide with those of certain castes or caste groups. However, affiliation to one of these estates at the same time has a modifying effect on one's caste status. As to the ascetics, initiation, that is, admission into an estate, implies a change of caste status. As to the slaves, caste status is partially suspended due to the overriding legal status of the slave. In sum, the initiation of ascetics and the emancipation of slaves have the same effect as a "retort", namely that they offer the individual a chance to change the caste into which he had been born. In the case of the ascetics this change takes place on the individual's voluntary decision, as is also stressed by Caplan.[96]

We have already raised the question whether slave emancipation can imply upward mobility, elevating slaves from the impure castes to the status of a pure caste, such as the Gharti. Has the initiation to one of the ascetic sects a similar effect, enabling a non-"Cord-Wearer" to advance to the status of a "Cord-Wearer"? Although statistical evidence in the ethnographic records proves the contrary, the (later) legislation only excludes the members of the impure castes from being admitted into one of the sects. Be that as it may, both the slaves' and the ascetics' cases show the caste as an all-pervading primary status dimension determining the recruitment to other divisions of the society of the MA.

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[95] Cf. also Briggs 1938: 27, 46ff. on North India.

[96] Caplan 1973: 181.

XI

ETHNIC GROUP AND CASTE

We have already seen that there is a number of groups within the hierarchy of the MA which are usually denoted as ethnic groups in the anthropological literature.[1] It is a positive fact that it was Western research and administration which introduced the distinction between caste and ethnic group in South Asia. In Nepal, too, the distinction has occurred only in the modern, post-1951 legislation. Thus the Civil Liberties Act of 1955 prohibits the discrimination of persons on the basis of their "*warṇa* [...] *jāt*, *jāti* [...]", and in the official English translation these three terms are rendered by 'race', 'caste' and 'tribe' respectively.[2] In India, *jāti* is generally used with the meaning of 'caste' whereas since 1947 for 'tribe' or 'ethnic group' the word *ādivāsī* has more and more taken root.[3]

It is no wonder that the MA knows no such difference. It employs *jāt* for all groups within its hierarchy, and this is also in line with present-day general usage in Nepal. Furthermore, the MA knows no systematic categorisation of the various groups according to cultural or linguistic criteria. Only from the terminology, which is by no means applied consistently, can be concluded that the legislator is aware of such heterogeneity. There are four categories which stand out with particular clearness:

a) The Parbatiya *(parwatyā)*, comprising the Nepali-speaking part of the population, from the Upādhyaya Brahmins down to the untouchable castes of the Gāine, Damāi, etc.[4]

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[1] Cf. pp. 10f.

[2] Nepāl Ain Saṁgraha 2021, III, p. 1221 § 4; Civil Liberties Act 1955; Constitution 1967: 5 § 3.

[3] The term means 'aboriginal', 'original inhabitant'.

[4] In the MA, the term occurs in connection with the "Cord-Wearers":¼" ...*parwatyā kṣatriya jāt ra*

b) The Newār *(newār jāt)* denotes the Newāri-speakers, likewise representing a complete hierarchy, from the Dew Brahmins down to the Untouchables, such as the Poṛe or Cyāme.

c) The "Bhoṭe" *(bhoṭyā)*[5] in the caste group "Enslavable Alcohol-Drinker". This term comprises several groups of Tibetan linguistic and cultural affiliation which are not mentioned by name.

d) The Kirāti *(kirāti, kirāṁti)*[6] for the groups in Eastern Nepal, nowadays going by the names of Rāi and Limbu.

Parbatiya and Newār

The MA uses the expression *newār jāt* mostly with a subsequent specification of the caste group. The Newār are also sometimes labelled *tin saharkā newār*, i.e., 'the Newār of the three cities [of the Kāthmāṇḍu Valley]'.[7]

Unlike the Bhoṭe and Kirāti, the Newār have their own intra-ethnic caste hierarchy and they, too, distinguish between "Water-Acceptable" and "Water-Unacceptable" castes *(ju pim* versus *ma ju pim)*.[8] How is this hierarchy put in relation to the "national" caste hierarchy of the MA?

As we have already seen (pp. 71-72), the "Water-Unacceptable" castes of the Newār are unambiguously ranked in the hierarchy, but not as a separate block; rather they are interspersed among the other castes, most of which belong to the Parbatiya group. This becomes particularly evident in the case of the Untouchables. As to the touchable impure castes, however, no Parbatiya is to be found among them, unless we include the Curauṭe (Cuḍārā), whose mother tongue is likewise Nepali. The rest of these touchable impure castes is made up of Newār castes (from the Kasāi down to the Kulu), of Muslims and "foreigners" *(musulmān, mlecch)* and of a Terai caste *(madheśkā teli)*.

In spite of the clear-cut fixation of the hierarchy by the legislator, there are discrepancies between the law and the reality. Although the Cyāme, for instance, are classified in the MA as the lowest caste (with an adequate substantiation), they regard themselves as higher than the Kāmi, Sārki and Damāi (all three being Parbatiya) and refuse to take cooked food from them, as reported by Nepali.[9] Similar discrepancies can be found with regard to the position of the highest castes.

According to Rosser and Nepali, the Dew Brāhmaṇ (Dew Bhāju) and the Buddhist priests, the Gubhāju, represent the highest castes in the intra-ethnic hierar-

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arū parwatyā tāgādhāri..." (MA, p. 659f. § 1-8).

[5] < Tibetan *bod-pa*, 'Tibetan'.

[6] < Sanskrit *kirāta*, the name of a tribe also mentioned in the Mahābhārata. Cf. also Shafer 1954: 124f.

[7] Cf., i.a., MA, p. 642f.; p. 145 § 5.

[8] Rosser 1966: 87.

[9] Nepali 1965: 177f.

chy of the Newār.[10] While the Gubhāju do not occur in the MA, the Dew Bhāju are mentioned, even though not explicitly as a Newār caste. Inferring from the context, the Dew Bhāju are by no means put on a par with the Upādhyaya Brahmins, but seem to rank below the Chetri, among the Brahmins of India and the Terai, whom one is tempted to label "second-class" Brahmins. In one passage of the MA we find the following enumeration:[11]

Upādhyaya Brahmin—Rajput—asal Jaisi—Chetri *(tāgādhāri kṣatri)*—Dew Bhāju—Tirhuti *(terhautyā)* (= ? Jhā Brahmin)—Bhaṭṭ (Brahmin)—Marāṭhā Brahmin *(marhaṭṭā)*—Nāgar (Brahmin)—Gujrāti (Brahmin)—Tailaṅgi *(tailaṁti)* (Brahmin)—Mahārāṣṭra (Brahmin)—Drāwiḍ (Brahmin)—these Brahmins of India and the Terai *(madhisyā desi wrāhmaṇ)* and other Brahmins of foreign countries *(wīrānā rājkā arū gairha wrāhmaṇ)*—followed by the ascetic sects.

It is not clear whether the Dew Bhāju are included in the group of the "Indian Brahmins",[12] on the one hand, and whether the Bhaṭṭ and Tirhuti are regarded as belonging to the Newār, on the other. We know that the Dew Bhāju claim that their ancestors immigrated from India, and we also know that some Bhaṭṭ and Jhā (both most probably identical with the Tirhuti) Brahmins have served as temple priests in the Kāṭhmāṇḍu Valley since the Malla period and become integrated into Newār society.[13]

Be that as it may, the relatively low position of the Dew Bhāju is conspicuous if we consider that during the Malla period their forefathers were invested with the same privileges as the Upādhyaya of the MA.[14] The legislator does not substantiate their status allocation on the basis of cultural or structural criteria, such as food habits or interrelations with other castes, and one hesitates to assume that this decline was solely the outflow of the conquest of the Kāṭhmāṇḍu Valley in the late 18th century. The discrepancy between the status position as accorded by the law and the self-assessment remains, however, to be emphasised. It is significant that, among the Newār, the Dew Bhāju also go by the name of Upādhyaya or Rājopādhyaya, although the MA reserves this name to the Parbatiya Brahmins. To my knowledge, the Dew Bhāju fancy themselves higher than the Parbatiya Upādhyaya, and according to Nepali, they do not intermarry with the latter.[15]

Unlike the Dew Bhāju and the impure castes, the other Newār castes between these two extremes are not explicitly ranked and put in relation to the "national" hierarchy. There is, however, one passage in the MA where some of these castes are mentioned in connection with the divorce payment (see p. 48). If the sum of the divorce payment can be interpreted as a status indicator, a comparison with the payments for women of other, non-Newār castes will suffice to ascertain the status position of these Newār castes. The following synopsis[16] of two separate passages of the MA is based on this assumption.[17]

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[10] Rosser 1966: 85ff.; Nepali 1965: 150ff.

[11] MA p. 586f. § 1-4; p. 670 § 1-2. As to the question whether the Dew Bhāju rank below the Chetri cf. p. 130.

[12] Cf. also MA p. 653f. § 3-4; p. 468 § 3. On the "Indian Brahmins" given here cf. Sherring 1974: 297 (index) and Bhattacarya 1968. According to Śarmā (2019: 530), the *drāwiḍ (drawiḍ)* consist of five Brahmin groups, namely: *āndhra, karṇāṭ, gurjar, drawiḍ, mahārāṣṭra*.

[13] Cf. Nepali 1965: 150ff.; Laṁsāl 2023: 38; Petech 1958: 180f., 186; and Bista 1972 b: 21.

[14] Laṁsāl 2023: 38, 50. The Dew Bhāju were royal chaplains *(rājguru)* as well as teachers and priests *(purohit)* for the higher Newār castes.

[15] Nepali 1965: 152. To my knowledge, such alliances have at least been legally sanctioned since the days of Prime Minister Juddha Śamśer.

Divorce payment among the Newār

according to caste group	Rs	for women of the following Newār castes:	Rs
"Cord-Wearer"	100	(not mentioned)	–
–	–	*tharghar ra asal śreṣṭ* (= ? Chathariya Śreṣtha)	70
"Non-enslavable Alcohol-Drinker"	60	"other" *śreṣṭ* (= ? Pācthariya Śreṣṭha) Bāḍā (= Bāṛā or Śākya, goldsmiths and metal-casters) Udās (merchants, craftsmen)	60
–	–	Jyāpu (farmers) "and their equals" *(jyāpu saraha)*	40
–	–	Sālmi (= Mānandhar, oil-pressers) Nakarmi (= ? Kou, blacksmiths) Chipā (dyers ?) Māli (gardeners) Khusal (palanquin-bearers) Musal (= ?) Duñā (= ?) Citrakār (painters) "and their equals" *(inai saraha)*	35
"Enslavable Alcohol-Drinker"	20	–	–
"Water-Unacceptable" including Untouchable	15 (!)	Kasāhi (= Kasāi) Kusle Kuluḍom (= Kulu) "and other" (Touchables)	15
		Poḍhyā (= Poṛe) Cyāmā (=Cyāme) (Untouchables)	10

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[16] In the right hand column, the amounts have been corrected. The MA gives Rs 10 for the touchable impure castes and Rs 15 for the untouchable ones. This is a misprint, as is proven by the data of the MA of BS 2009 V, p. 77f. § 12-13.—The identity of some of the castes is not clear. Duñā = ? Dunyeeyan mentioned by Nepali (1965: 173f., 184) as a touchable impure caste. Musā = ? Mu/Mow/ Mulmi/Moot, a subdivision of the Jyāpu (Chattopadhyay 1923: 537).

[17] MA pp. 468-473, 645.

A comparison between the two columns shows the following:

a) The hierarchical gradation of the amounts is unambiguous, but the assignment of most of the Newār castes to the five caste groups seems to be inconsistent.

b) The *tharghar asal śreṣṭ* occupy an intermediate position between two caste groups, namely the "Cord-Wearer" and the "Non-enslavable Alcohol-Drinker". The legislator has obviously to tackle a factual contradiction between his theory and ethnographic reality, since most of the Śreṣṭha wear the holy cord, but—like most of the Newār, except for the Dew Bhāju and the Josi (to my knowledge)—they partake of alcohol. In the orthodox view, these two things are incompatible. This fact seems to be taken into account in two passages where the *janai lāunyā nalāunyā nāmāsinyā newār*, i.e., 'the cord-wearer and the non-cord-wearer non-enslavable Newār', are mentioned on the same level as the caste group of the "Non-enslavable Alcohol-Drinkers".[18] It is noticed, we may conclude, that there are "Cord-Wearers" among the Newār, but because they partake of alcohol, the legislator ranks them below the "Cord-Wearers" among the Parbatiya. Another passage also indicates the MA's en-bloc classification of the Newār as *matwāli*, i.e., "Alcohol-Drinkers": by the term *dikṣā linyā matwāli jāt*, 'the *matwāli* who receive the *dikṣā* [*dīkṣā*, consecration for wearing the holy cord]', the Newār castes, such as the Śreṣṭha, can also be meant.[19]

c) It is easier to understand the reasons why the Bāṛā, i.e., the Śākya who are Buddhists and do not wear the holy cord, are classified as "Non-enslavable Alcohol-Drinkers". However, this is at variance with empirical reality, for the Śākya, from whom the Buddhist priests, the Gubhāju, are recruited, regard themselves as of equal rank with the Dew Bhāju Brahmins and thus as superior to the Śreṣṭha[20].

d) The context fails to elucidate why the castes from the Jyāpu down to the Citrakār occupy an intermediate position between the caste groups "Non-enslavable Alcohol-Drinker" and "Enslavable Alcohol-Drinker". It is not laid down which Newār are enslavable and which not. On the one hand, the MA distinguishes, at least terminologically, between *māsinyā* and *namāsinyā* Newār.[21] On the other hand, it decrees: "The Newār pure castes, who from ancient times had been enslavable, must henceforth not be enslaved for having committed crimes which [normally] are to be punished by enslavement *(māsinyā khat)*. From now on, [only] the impure castes among the Newār are to be enslaved if they commit a crime punishable by enslavement".[22] That is, although some of the pure Newār castes are still called "enslavable", they cannot be enslaved, unlike the non-Newār "Enslavable Alcohol-Drinkers" among the other ethnic groups, such as the Bhoṭyā, etc. It seems as if in this respect, too, the Newār would be granted an exceptional position.

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[18] MA p. 470f. § 10, 14. By contrast, the MA of 2009 (V, p. 20 § 44) determines that cord-wearing and alcohol-drinking exclude each other.

[19] MA p. 389 § 33, cf. also p. 444 § 36-37.

[20] Rosser 1966: 85f.; Nepali 1965: 150, 153f.; cf. also Greenwold 1974.

[21] MA p. 454 § 36-37.

[22] "[...] *aghi dekhi māsi āyākā newār jāt gairhamā pāni calnyā sammakā newār jātle māsinyā khat garyāmā inherūlāi namāsinyā newār jātkā saraha sajāya garnu aba uprānta jyū namāsnū* [...] *pāni nacalnyā newār jātlāi māsinyā khatmā māsinucha*", MA p. 644 § 1.

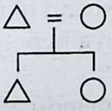
One may note in passing that the Pahari—farmers, basket-makers and woodcutters who settle in the southeastern corner of the Kāṭhmāṇḍu Valley—are not grouped among the Newār,[23] despite the fact that they have largely been acculturated by the latter.[24] Rather, the MA mentions them as one of the enslavable alcohol-drinking castes, together with the Bhoṭe, Cepāṅg, Mājhi, Danuwār, Hāyu, Darāi and Kumāl.

In sum, the MA recognises the bulk of the Newār as an autonomous ethnic group *(newār jāt)* with an exceptional or even ambiguous position within the greater, "national" hierarchy. Conspicuously, most of the Newār castes, if mentioned by name at all, are dealt with in separate chapters.[25] A few other castes, such as the Dew Bhāju, are not explicitly treated as Newār.

We can assume that the legislator's uncertainty does not entirely result from the conflict between the orthodox normative model and empirical reality, as in the case of castes which, at the same time, wear the holy cord and partake of alcohol. The classification of the various Newār groups is a difficult task, for even nowadays the observer is faced with an immense number of them; their names frequently vary with the settlement and with the informants; some groups regard themselves sometimes as a separate caste and sometimes as a subcaste; and the information obtained on their status position within the hierarchy can also be inconsistent.[26]

What can be inferred from the regulations dealing with the interrelations between Newār and Parbatiya? Let us examine some paragraphs on intermarriage between Newār men and women who, according to the context, are from the Parbatiya castes.[27]

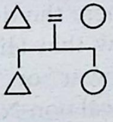
a) Newār



"Cord-Wearer" and *lyāitā* ("concubine") who has already had intercourse with two "Cord-Wearer" men

obtain father's caste status and receive full share of inheritance

b) Newār



a *lyāitā* wife of any of the pure castes

Kamalwat Newār

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[23] MA p. 367 § 4.

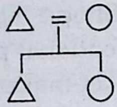
[24] Toffin 1977: 2; Nepali 1965: 32.

[25] MA pp. 644ff., 675ff.

[26] Cf., i.a., Nepali 1965: 150ff.; Rosser 1966: 84ff. On the diversity of caste names in Bhaktapur alone cf. Gutschow and Kölver 1975: 55ff. A synopsis of the data collected by Hodgson, Hamilton, Oldfield, etc, on the Newār is given in Chattopadhyay 1923.

[27] MA p. 644f. § 2-6.

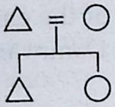
c) Newār



"Cord-Wearer" who has been "spoilt" by a previous hypogamous union

Lawaṭ Newār (receive full share of inheritance if father's fellow caste members consent to accept *bhāt* from them)

d) Newār

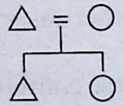


{"Non-Enslavable Alcohol-Drinker"
or "Enslavable Alcohol-Drinker"} married as a virgin or as a widow

Lawaṭ, do not obtain father's caste status (!)

And finally a union between two Newār:

e) Newār



Newār, *lyāitā*, of a caste ranking lower than husband's

either Lawaṭ or they adopt mother's caste status (according to the will of the relatives concerned)

To all appearances, the term Lawaṭ is only the abbreviated form of Lawaṭ Newār. Consequently, it seems that all issues of such intermarriages, including the Kamalwat are regarded as Newār by the MA (cases a-d). The text is, however, reticent about their precise caste status as well as about that of the fathers'. According to Śarmā,[28] *lawaṭ* means 'progeny of a hypogamous union', but such an interpretation would be at variance with case (e).

The later edition of the MA contains more detailed regulations: The Newār are debarred from marrying Brahmin (Upādhyaya and asal Jaisi) and Rajput women in general. They may, however, marry (as "concubines", as it seems) divorced women of the Chetri and other lower "Cord-Wearer" castes. Even if the Newar man in question is the third husband to such a woman, their offspring obtain the caste status of the father. If the Newār man is the fourth husband to the woman or if the woman had previously been "spoilt" by entering upon a hypogamous union with a non-"Cord-Wearer" man, the issue is called Lawaṭ.[29]

In fact, intermarriages between the Newār of the Kāṭhmāṇḍu Valley and the Parbatiya are unusual.[30] Perhaps the prescriptions of the MA refer to the Hill Newār, i.e., those Newar settling outside the Valley in regions where the dominant portion of the population is made up of Parbatiya. We know that Hill Newār are mostly regarded as *one* caste and figure under the label "Newār" or "Śreṣṭha" and that the progeny of unions between Hill Newār men and local non-Newār women are called Lawaṭ.[31]

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[28] Śarmā 2019: 910.

[29] MA 2009, V. p. 75 § 1. According to Nepali (1965: 148f.), it is the offspring of hypergamous marriages between two Newār, which is called in the Newāri language *lava* (hence *lawaṭ* ?).

[30] Nepali 1965: 187f.

[31] Apparently, the Hill Newār are the outcome of a fusion of several Newār castes. They probably prefer the caste name Śreṣṭha because in the Kāṭhmāṇḍu Valley it covers several grades in the hierarchy, implying a relatively high status, roughly equivalent to *kṣatriya*; in the Malla

We may conclude that the integration of the intra-ethnic hierarchy of the Newār into the MA's all-embracing "national" hierarchy of castes is often deficient or ambiguous and at variance with the self-assessment of the Newār castes. In spite of terminological analogies, the relations between the two hierarchies are not defined in all cases, and there is a lack of fit between the caste groups. Seen apart from the Dew Bhāju and the impure Newār castes, the only indicators to the status allocation of the pure Newār are the regulations of the divorce payment. The list of these pure castes is far from being complete. The incongruities can be traced back, partly at least, to the specific cultural traits of the Newār society which obviously put the legislator in a dilemma. It will be shown below (pp. 142-147) to what extent such specific traits can be legally recognised as such.

The Bhoṭe, Kirā̃ti and other ethnic groups

Unlike the Newār, other ethnic groups do not have their own intra-ethnic hierarchies. Even if some of them do show an internal stratification, this is not comparable to a hierarchy of castes. As a rule, every single ethnic group represents a separate caste in the hierarchy of the MA, and this is true of empirical reality as well. Another characteristic of these ethnic groups lies in the fact that they are closely "pressed together" in the hierarchy: they are assigned to only two caste groups, namely to the "Non-enslavable Alcohol-Drinker" and, most of them, to the "Enslavable Alcohol-Drinker". This is in clear contrast to the Newār and Parbatiya castes with their rather discontinuous distribution between the highest and the lowest status positions in the hierarchy (cf. p. 9, fig. 2).

Let us emphasise that the MA contains little information on these groups and their precise status allocation. They are, indeed, mentioned only sporadically, for example, the Sunwār, the Limbu Kirā̃ti, the Guruṅg, the Magar, the Lepcā (Lāpcyā), the Thāru, and finally the Cepāng, the Hāyu, the Bhoṭyā, the Mājhi, the Danuwār and the Darāi.[32] Often the MA mentions them when it should be underlined that their customs are an exception to the rule. A "tableau" of such anomalous paradigms is given in the text referring to the Mecyā (cf. above pp. 72-74), enumerating the Newār, Magar, Guruṅg, Bhoṭyā and Lepcā who eat the meat of buffalo, pig, chicken, cow and elephant, respectively.

Fig. 13 is an attempt to classify these ethnic groups. On the left they are tentatively classified according to ethnographic criteria and according to their self-

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period, the nobility was mainly recruited from among the castes or subcastes now subsumed under the name Śreṣṭha (cf. Nepali 1965: 159ff.).—As Caplan (1973: 49, 53) and Fürer-Haimendorf (1960: 28) note, children from marriages between Hill Newār men and Magar or Guruṅg women are called Nagarkoṭi (and not Lawaṭ), and I was told the same with regard to marriages between Hill Newār men and Tāmāṅg women (cf. p. 202f.).

[32] MA pp. 604; 565; 392, 454f.; 392; 367 § 4 (in order of reference). As to the name of the ethnic group commonly known as Lepcha, modern Nepali spelling varies: *lepcā/lāpcā/lāpce*.

Fig. 13. Ethnic group and caste

ethnographically		in the MA mentioned as	caste group
–	Magar	Magar	"Non-enslavable Alcohol-Drinker"
	Gurung (Guruṅg)	Guruṁ/Guruṁghale	
Tibetanoid	Lepcha (Lepcā)	Lāpcyā	
	Tamang (Tāmāṅg)	Bhoṭyā	"Enslavable Alcohol-Drinker"
Tibetanid	Sherpa (Syārpā) and other local groups of Tibetan cultural and linguistic affiliation in the high mountains from Limi to Wallung		
Kiranti	Limbu	Limbu Kirāti	
	Rai (Rāi)	–	
	Sunwar (Sunuwār)	Sunuwār	
	etc	–	
–	Chepang (Cepāṅg)	Cepāṅ	
–	Hayu/Vayu (Hāyu)	(Hāyu)	
Awaliya	Majhi (Mājhi)	Mājhi	
	Danuwar (Danuwār)	Danuwār	
	Darai (Darāi/Darai)	Darai	

designations; the classification on the right is based on data drawn from the MA.[33]

The diagram shows a) that, quite naturally, linguistic or cultural subdivisions are on the whole irrelevant for the legislator; b) that only a dwindling number of the numerous ethnic groups is mentioned by name; and c) that the category "Bhoṭyā" is too wide.

Just as in the case of the Newār, here again we may assume that the legislator is rather at a loss when confronted with the complexity of the empirical facts. Thus the classification of the so-called Kirāti well illustrates the incongruities between the objective linguistic criteria, on the one hand, and the subjective criteria of self-perceived ethnic identity, on the other.[34]

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[33] Cf. note 32.—With the exception of the Awaliya, all groups enumerated in fig. 13 speak Sino-Tibetan languages; Cepāṅg and Hāyu are also believed to be related to the Kirāti languages (cf. Hale 1973: 11; Michailovsky and Mazaudon 1973: 135-152; cf. also Shafer 1974: 142-157).

[34] The diagram below is based on Fournier 1974: 62; Michailovsky and Mazaudon 1973: 136, 138.

	linguistically	ethnically	
Jirel	Tibetan dialect	Sunuwār	Kirāti
Sunuwār proper Surel Rāi (Bahing)	Kirāti languages (Bahing)		
Limbu Hāyu	East Himalayish languages		

The picture is further complicated by other facts. For example, the Jirel and the Sunuwār proper are Lamaists, whereas the Rāi, Limbu and Hāyu are not. Yet again, Rāi is an artificial designation of recent origin under which a great number of more or less endogamous local groups with considerably varying dialects are subsumed. As is well-known, the Nepali term *rāi* was initially only employed for the leaders of villages and/or of local descent groups of the contemporary Rāi; only later did it become an ethnonym. Perhaps it is due to this new name that the various groups, now called Rāi, became aware of their ethnic identity.[35]

We also learn little about the statuses these ethnic groups as individual castes have within the hierarchy. The order of enumeration of their names offers hardly any indication. One passage of the MA gives the sequence: Bhoṭyā—Cepāṅg—Mājhi—Danuwār—Hāyu—Darai—Kumhāl—Pahari, whereas another one mentions them in the subsequent order: Bhoṭe—Cepāṅ—Darhai—Mājhi—Hāyu—Danuwār—Kumāl—Pahari.[36] In a document nearly twenty years older than the MA the enumeration of the "Enslavable Alcohol-Drinkers" is different again: Balāmi—Mājhi—Danuwār—Sunuwār—Murmibhoṭyā—Cepāṅg—Pahariwarai—Kumhāl—Warānu.[37]

On p. 73 we have pointed out that the MA mentions a number of ethnic groups in connection with the animals whose meat they habitually eat. The following (fragmentary) list in fig. 14 shows, however, that meat consumption does not provide a consistent rationale for status allocation.[38] As an "attributionistic" criterion it is of as little help as is the caste-specific occupation in other contexts (p. 73f.).

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[35] This surmise is not necessarily contradicted by McDougall (1973) in whose view the Rāi were originally a group of linguistic and cultural homogeneity. He assumes that the abundance of subgroups to be noted today has resulted from fissiparous tendencies inherent in their kinship system.

[36] MA p. 376 § 4; p. 625 § 4.

[37] Nepāli 2022: 203, reprinted in the annex to the MA, p. 701.—The Balāmi are mentioned by Nepali (1965: 174) as an impure Newār caste; and the Warānu could be identical with the Bar(h)āmu, another Awaliya group (cf. Putnam 1975: 16; Frank 1973: 39, 150).—Here, too, empirical reality diverges from the law. Although the MA classifies the Cepāṅg as a pure caste, the Brahmins and Chetri practically regard them as Untouchables (Jest 1966: 17f.).

[38] fish = from one's professional fishing; * = mentioned in the MA.—The synopsis is based on the following sources (in order of reference): Pignède 1966: 40, 164; Hitchcock 1966: 81; Gorer 1967:

Fig. 14. Meat of animals eaten by members of ethnic groups

	meat of animals eaten:	caste group:
Newār	buffalo* (...)	all caste groups
Guruṅg	buffalo, goat, chicken*	"Non-enslavable Alcohol-Drinker"
Magar	pig*, chicken	
Lepcā	pig, cow, goat, chicken, elephant*	"Enslavable Alcohol-Drinker"
"Bhoṭe"	buffalo, cow* and/or yak (and its cross-breeds), goat, sheep, chicken	
Limbu	buffalo, pig, goat, chicken	
Sunuwār proper	buffalo, pig, goat, chicken	
Cepāṅg	buffalo, pig, goat, chicken	
Hāyu	pig, (...)	
Mājhi	buffalo, sheep, goat, fish	
Danuwār	goat, chicken, fish, (buffalo?)	
Darāi	goat, chicken, fish, (buffalo?)	

We see that it is only the Bhoṭyā who partake of beef (i.e., the meat of cows or oxen perished by an accident or a disease). That the Magar as "pork-eaters" rank higher than the Bhoṭyā "beef-eaters", is not surprising, even though the latter, for their part, refuse to eat pork. But why do the Magar rank higher than the other "pork-eaters" among the enslavable castes? Or, why do "beef-eaters" and "pork-eaters" belong to the pure castes at all if the eating of beef (Sārki) and pork (Kāmi, Sārki, Damāi, etc) is, at the same time, a particular characteristic of the Untouchables? In any case, the consumption of beef seems to be of more relevance for status allocation than that of pork. It cannot remain unnoticed either that the Awaliya (Mājhi, Danuwār, Darāi) eat fish and earn their living by fishing, and we have to ask to what extent this fact may account for their relatively inferior status.[39]

Intra-ethnic stratification: the Guruṅg

The intra-ethnic hierarchy of the Newār is, as we have seen, a genuine caste hierarchy. To what extent can other types of intra-ethnic stratification be compared or approximated to the caste hierarchy? This is another problem little considered by the MA, and the case of the Guruṅg may obviously be regarded as an exception.

84; Jest 1975: 135ff., 186; Fürer-Haimendorf 1964: 12; Jones 1973: 25f.; Caplan 1970: 67; Fournier 1974: 64, 72; Nebesky-Wojkowitz 1959: 83; Bista 1972 b: 105, Jest 1966: 177; Michailovsky and Mazaudon 1973: 138; Bista 1972 b: 132f.—On the killing of the cow cf. below pp. 204-205.

[39] The untouchable Poṛe also fish. On fishing cf. above p. 75, on the Mājhi cf. Koirālā 1968.

According to Pignède,[40] the Guruṅg are divided into two status groups, namely the higher-ranking Cārjāt and the lower-ranking Solahjāt. The Cārjāt,,for their part, comprise four clans: the Ghale, Ghodane, Lama and Lamichane.[41] The status declivity between Cārjāt and Solahjāt is reflected, among other things, in the fact that the latter had until recently been regarded as the servants of the former, and that even today, lamas and village headmen *(krōh)* are exclusively members of the Cārjāt group. Tradition has it that in former times the kings and priests of the Guruṅg were Cārjāt. Although both names contain the Nepali word *jāt* and both groups are strictly endogamous, Cārjāt and Solahjāt cannot be considered castes stricto sensu, for pollution, commensality taboos, etc, are of no relevance for the relations between them.

Pignède reports that it was the Guruṅg themselves who doubted (and still doubt) whether there is a status declivity at all between Cārjāt and Solahjāt, or whether it is legitimated by tradition. He quotes cases where people belonging to the Cārjāt tried to justify their superior position by drawing upon certain documents, and adds that the government under Jaṅg Bahādur is said to have confirmed their claims.[42]

Be that as it may, the MA fails to give such explicit confirmation. Above all, it is striking that the MA speaks of "Guruṅg-Ghale" *(guruṁghale)* as if it wanted to make plain that the Ghale are to be classified as Guruṅg. This is noteworthy since the Ghale of the Trisuli and Ā̃khu Kholā valleys regard themselves as an autonomous ethnic group, and not as a Cārjāt clan of the Guruṅg.[43] The MA further states:[44]

As all people called Guruṅg *(guruṁ nām gairha)* represent *one* caste and as to date they accept *bhāt* from one another *(jāt ekai* [. . .] *ra bhātmā ājasamma sarowar calāi āyāko hunāle)*, voluntary sexual intercourse with an unmarried or a widowed woman as well as *bhāt* acceptance from that woman are not punishable acts *(khatbāt)*. Every Guruṅg is free to accept *bhāt* from another Guruṅg and to marry a Guruṅg woman or to marry his daughter to a Guruṅg; he does not lose his caste status *(jāt jādaina)*. Whoever refuses to do so by asserting that his status is higher than that of the other party *(hāmro jāt ṭhulo ho tasko jāt sānu ho)* is liable to be fined with Rs 20.

The full text runs as follows:

> *"gorkhā rāj bhar mulukkā bhātmā sarowar calyākā gurūṁ nām gairha jātkā (...) kaṁnyā widhwāko rāji khusile karaṇi garnyālāi bhātmā boryāko bhayā pani nabhayā pani guruṁ nām gairhako jāt ekai hunāle ra. bhātmā pani ājasamma sarowar calāi āyāko hunāle karaṇi garnyā garāunyā duwailāi khatbāt*

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[40] Pignède 1966: 163-187, 224-226; cf. also Messerschmidt 1976: 4-9, 124f.

[41] Cārjāt < Nepali *cār*, 'four', and *jāt*; Solahjāt < Nepali *sora/solaha*, '16'.

[42] Pignède 1966: 161, 182, 186ff. Cf. also Doherty (1974 a: 286) who emphasises the cultural unity and common ethnohistorical basis of the Cārjāt and Solahjāt.

[43] My own observation. Incidentally or not, the same twin term Guruṁghale already occurs in a document dating from BS 1893, that is, 17 years prior to the publication of the MA (cf. Nepāli 2022: 204).

[44] MA p. 454f. § 38.

> *lāgdaina. (...) gurūṁ nām gairhakā chori gurūṁ nāmle wihā garna bhani kaṁnyākā dāiyādārsita māgī wihā garecha bhanyā. dinyā linyāko jāt jādaina. āphnai jātmā rahaṁchan. phalānāki chori wihā gardaiān [gardainaū̃] bhanyo wā. phalānālāi chori diṁnau bhanyā chori didā lidā. āphnu khusi huṁcha. kar lāgdaina. gurūṁ gurūṁ jātmā hāmro jāt ṭhulo ho tasko jāt sānu ho bhanyā ra. bhāt kāḍhnyālāi 20/20 rūpaiyā daṁḍ garnu (...)"*

Nota bene, the MA does not prohibit the Cārjāt and the Solahjāt from continuing to be endogamous, as the decision on whom a Guruṅ marries or to whom he marries his daughter is explicitly at the discretion *(āphnu khusi)* of the persons concerned. Likewise, the Cārjāt are not forbidden to regard themselves as superior to the Solahjāt; rather they are forbidden to interpret their superiority *in terms of caste status*.

This passage with its conspicuously careful framing proves that the MA only recognises intra-ethnic stratification as caste stratification if contact between members of different status groups can produce a particular kind of pollution. Herein seems to lie one of the reasons for the legislator's relatively little concern for the various ethnic groups: he, who in principle conceives society as a caste society, does not interfere with intra-ethnic status groups unless he finds them "caste-relevant".

Ethnographic evidence, however, teaches that there are also intra-ethnic stratifications which are substantiated on the basis of a purity conception specific to the ethnic group concerned. The question is to what extent such ethno-specific purity conceptions "fit into" the ideological framework of the MA's caste hierarchy. Two Tibetanid groups, both not specifically mentioned in the MA, but presumably subsumed under the term Bhoṭyā, will serve as paradigms namely the people of Dolpo and the Syārpā (Sherpa) of Khumbu.

Intra-ethnic stratification: Dolpo and Khumbu

Until the mid-19th century, Dolpo was largely isolated from the rest of the Nepalese state's territory.[45] The caste hierarchy of their southern neighbours has thus been of little importance for the Dolpo people. However, due to their commercial relations with the caste population of the upper valley of the Bheri and of the area of Jumlā, they are familiar with the social organisation of the castes. Brahmins, Ṭhakuri and Chetri living there prevent the Dolpo people from entering their houses, and the latter are aware of the motives: "We are regarded as impure since we eat yak's meat (equated to cow's meat)." Comparing their intra-ethnic strata to the castes, they quote a dictum (probably translated from Nepali and thus of foreign origin): "For the Brahmin the mouth is pure, for the Tibetan the bone (=

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[45] Jest 1975: 43-55.

descent) is pure".[46] That is, for the Brahmin it is commensality which matters, for the Tibetan (of Dolpo) the observance of alliance rules. On the whole, Tibet's social hierarchy is by far more relevant to the Dolpo people as a validating framework for their own hierarchy.[47]

The inhabitants of Dolpo are divided into four strata: a) The "indigenous" part of the population forms the highest stratum from which the lamas and the village headmen are recruited. b) Next rank the descendants of immigrants as well as those persons of stratum (a) who have married women from among these immigrants. c) The *'gar-ra* are mostly peasants, though the word means 'blacksmith'. d) The *be-ra* manufacturers of brushes, settling on the periphery of the villages, most of them being employed as servants of wealthy people. Every stratum is composed of a number of exogamous lineages and is endogamous. Marital alliances are only allowed between families belonging to the same stratum, that is, between persons who "drink from the same cup" (cf. below p. 124). Sexual intercourse with persons from a stratum lower than one's own entails the loss of one's stratum-affiliation. However, rehabilitation is possible by drinking water which a lama has brought into contact with a piece of gold; this act is meant as a purification.[48]

With reference to Dolpo, Jest deliberately speaks of strata, avoiding the term caste. He demonstrates that, historically speaking, the most important elements of the Dolpo hierarchy are of Tibetan origin, such as the division into four strata, the inferior position of the blacksmiths (*'gar-ra*), the specific commensality rules regarding the "drinking from the same cup" and even the purification by means of gold and water.[49] Formally, the hierarchy in Dolpo lacks the specific totality of institutions and ideas of a society of castes. Nevertheless, some analogies cannot remain unnoticed. Regarding the transfer of impurity, the same unilaterality prevails as within the caste hierarchy: in Dolpo, too, impurity emanates from the status-inferior person, be it by drinking from the cup which he has touched with his lips or by sexual contact with him.[50]

Matters are similar in Khumbu. The Syārpā (Sherpa) of Khumbu are divided into two categories: a) the "pure" *khadeu* comprising mainly old-established Syārpā families; and b) the "impure" *khamendeu* consisting of Khamba immigrants from Tibet as well as of the Yemba said to be the progeny of former slaves.[51] There are no linguistic or cultural differences whatsoever between *khadeu* and *khamendeu;* the economic declivity is, however, considerable.

As in Dolpo, the purity concept manifests itself in a simpler form than in the caste society. A *khadeu* becomes polluted if he drinks from a cup which has previously been touched by the lips of a *khamendeu*. (*khadeu* literally means 'mouth-good', *khamendeu* 'mouth-not-good'.) The defilement is extinguished by washing the vessel. A *khadeu* will be degraded to *khamendeu* if he maintains permanent sexual relations with a *khamendeu* and the progeny of such a union will also be regarded as *khamendeu*.

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[46] *bahun gi ka* [recte: *kha*] *chaṅs-ma bod-pa gi rus chaṅs-ma*, Jest 1975: 257.

[47] Jest 1975 : 257.

[48] Jest 1975: 247-256.

[49] Jest 1975: 247ff. Formally at least, the purification by means of "gold-water" is similar to that practised among the castes, see above p. 33f.

[50] Jest (1975: 252) asserts that defilement is not brought about by, or emanates from, the lower-ranking contact person, but is caused by the mistake on the part of the higher-ranking one. Considering the facts he himself adduces, Jest's assumption is hardly plausible.

We see that pollution can only be transferred by sexual or oral contact through using one's cup. Unlike the castes, neither bodily touch nor the acceptance of food and water from the hands of a *khamendeu* nor eating in his mere presence are polluting. Another difference lies in the fact that impurity is less virulent than among the castes, since only in the case of permanent sexual relations with a *khamendeu* will a *khadeu* be degraded.

Finally, there is one practice in open contrast to the regulations of the MA. According to Fürer-Haimendorf, the offspring of hypergamous marriages between Syārpā women and Guruṅg or Chetri men are recognised as Syārpā.[52]

Caste and ethnic identity: the Tāmāṅg as Bhoṭyā

Unlike the subhierarchy of the Newār, the stratified societies of Dolpo and Khumbu on the one hand, and the greater hierarchy of the MA, on the other, exist side by side and do not meaningfully fit into each other, in spite of some analogies. That with the growing intensity of contacts of their representatives a "rapprochement" between the two systems can take place and that, as a consequence, ethnic identity hitherto ignored by the legislation can in the end provide an onset of an emerging caste identity, will be demonstrated by the paradigm of the Tāmāṅg, a group among the "Bhoṭyā".

As already mentioned, the designation Bhoṭyā or Bhoṭe, i.e., "Tibetan", used in the MA obviously comprises a number of groups exhibiting considerably varying linguistic and cultural characteristics, namely the Tibetans proper and those groups which we have termed Tibetanids and Tibetanoids (see p. 6f.). The width of this category is best illustrated by Jest who, as to the Tibetanids alone, enumerates a total of 13 local groups settling in an area ranging from Limirong in the West via Manang and Langtang to Wallung (Halung) in the extreme East of Nepal.[53] Besides that, the MA does not use the term Bhoṭyā for ethnically homogeneous groups only. This is shown by its regulations with regard to incest, according to which members of the caste group "Non-enslavable Alcohol-Drinker" (as, say, the Guruṅg or the Magar) are to be degraded to "enslavable Bhoṭyā".[54] The Bhoṭyā

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[51] For the subsequent discussion cf. Fürer-Haimendorf 1964: 34-37, 89f., 103, 125, 280, 288. On a similar intra-ethnic stratification among the Lhomi of Wallung cf. Fürer-Haimendorf 1975: 126.

[52] On the question of intermarriages cf. also Oppitz 1968: 125ff.

[53] Jest 1975: 33–39.

[54] MA, pp. 543-547.

being a sort of reservoir for degraded persons of various ethnic origin, along with the fact that they partake of beef, may account for the contemptuous connotation the term has in the general usage of high-caste Nepali speakers.[55]

Although the Tāmāṅg are now the country's largest ethnic group (the Census of 1971 speaks of 555,000 Tāmāṅg native speakers), they are not mentioned by name in the MA, not even by the then usual designations Murmi or Lāmā. Yet according to Bāburām Ācārya, the name Murmi is verifiable in documents dating from about 1769,[56] and in a *lālmohor* from BS 1893 (= 1836) the Murmibhoṭyā are mentioned as a caste belonging to the "Enslavable Alcohol-Drinkers".[57] In fact, the MA takes no heed of the subjective ethnic identity of the Tāmāṅg nor of the existence of objective cultural criteria marking them off from the rest of the Bhoṭyā. As ethnographic evidence shows, the Tāmāṅg regard themselves—at least today—as an autonomous caste. They refuse to accept the label Bhoṭe and decline an identification with the various Tibetanid groups, even if they are also followers of Lamaism and, according to their own tradition, descendants of immigrants from Tibet.[58]

It was not before 1932, that is to say, nearly 80 years after the promulgation of the MA of Jaṅg Bahādur, that the legislator took this discrepancy into account—without succeeding in fully abolishing it. A decree signed by King Tribhuwan and the then Rāṇā Prime Minister Bhim Śamśer lays down that, instead of the hitherto employed designations Lāmā and Bhoṭe, henceforth the designation Tāmāṅg may be used officially: "Henceforth [. . .] the group of the Twelve Tāmāṅg from among the caste of the Bhoṭe *(12 tāmāṅ jātikā bhoṭeko jāt)* shall not be called Lāmā [or] Bhoṭe in documents of the military and civil administration, of the government offices and of the army as well as in everyday life *(wyawahār)*, but shall be called Tāmāṅg." It is also stated that the decree complies with an application which was addressed to the government by a leader *(aguwā)* of the "Twelve Tāmāṅg".[59] The text reads as follows:

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[55] Even nowadays, Bhoṭe is a synonym for 'savage', 'dirty fellow', 'serf', 'beef-eater' and the like.—In general usage, too, it is only occasionally that Nepali speakers call the inhabitants of Tibet proper Thākse Bhoṭe in order to distinguish them from the "Tibetans" settling within the boundaries of Nepal. However, the distinction is not clear-cut, as the inhabitants of Thāk, especially the Thākāli, are also called Thākse. Cf. also Śarmā 2019: 488, 802.

[56] Ācārya 2024: 234, 237. According to the same author (2024: 325f.), at the time of Prithwi Nārāyaṇ's reign the term Bhoṭe was used in reference to at least three different groups, namely the Tāmāṅg, the Syārpā (here the inhabitants of Kuti and Bigu) and the Tibetans proper.

[57] Nepāli 2022: 203-204.

[58] The Tibetanid inhabitants of Khumbu and Helambu similarly refuse to be called Bhoṭe (Goldstein 1975: 68ff.). To my knowledge, some high caste speakers label even the Guruṅg as Bhoṭe. The Guruṅg, for their part, reserve this term (*bhot-mai*, in their language) for the Tibetanid groups (Pignède 1966: 162).

[59] Published in the Gorkhāpatra, BS 1989 *śrāwaṇ 11 gate*.

> *"nayāṁ īstahār āge nepāl sarahad bhar mulukkā jaṁgī nijāmatī aḍḍā gauṁḍā goswārā bhaī [bhāī ?] bhārādār raiti duniyā gairake yathocit.*
>
> *upränta 12 tāmāṅ jātilāī lāmā bhoṭe bhanne calan calekole arūharū anek kisimkā jāt tharharūkā pani lāmā bhoṭe bhanī bolāine ra lekhine hunāle kun bhāṭ* [recte: *bhoṭe*] *ke jāt tharko ho kehi chuṭṭīne bhaena hāmī 12 tāmāṅlāī āphno tāmāṅ jāt bhanne bhanine lekhne lekhāine garāi bakse huṁdo ho bhanī so tāmāṅ jātikā sardār bahādur jaṅg wir (...) aguwā bhaī jāher garekā kurā manāsiwai dekhieko huṁdā so kurā manjur garī baksī yo īstahār jārī garī bakseko cha.*
>
> *aba upränta hāmrā nepāl sarahad gorkhā rāj bharkā tāmāṅ jātile āphno jāt lekhdā lekhāuṁdā tāmāṅ bhanne lekhne lekhāune garnu jaṅgī nijāmatī sarkārī aḍḍākhānā palṭankā kāgajmā ra duniyādārkā wyawahārmā pani 12 tāmāṅ jātikā bhoṭeko jāt lekhdā ra so jātkā bhoṭelāī lekhāuṁdā lāmā, bhoṭe nabhanī tāmāṅ bhanī lekhne wolāune garnu."*

It is striking that, according to the context, the Tāmāṅg cease to be called Bhoṭe but continue to be regarded as belonging to the Bhoṭe. What is more, the text employs the words *jāt* and *jāti* for both the Bhoṭe and the Tāmāṅg. Thus it is left undecided whether the Twelve Tāmāṅg are recognised as a separate caste or as a mere subgroup within the caste of the Bhoṭe.

It is worthwhile noting that the decree only refers to the Twelve Tāmāṅg and not to all those who actually call themselves Tāmāṅg. I do not know which group is meant by Twelve Tāmāṅg. Fürer-Haimendorf reports on the Tāmāṅg settling to the East of the Kāṭhmāṇḍu Valley that they are divided into two groups, the higher-ranking of which is the Bārajāt (< Nepali *bāra*, 'twelve' + *jāt*, here in the sense of 'clan') and the other one Aṭhārajāt (< Nepali *aṭhāra*, 'eighteen'); the former are Tāmāṅg of "pure" descent, the latter stem from marriages between Tāmāṅg men and women of other groups and castes.[60] On my travels in the same area I could find no trace of such a division.

Nevertheless, the decree is a noteworthy document of the ethnogenesis of the Tāmāṅg. What prompted the legislator to this naming can at present only hypothetically be reconstructed, and the subsequent attempt to do so is based on my own field work among the Tāmāṅg in western Central Nepal.

Before 1932, probably even before the MA's promulgation, the ancestors of the present Tāmāṅg had a minimal or latent identity, based on common cultural and linguistic criteria and on the awareness of a common, mostly mythically substantiated origin.[61] At this stage, sections of the "protogroup" were known as Murmi, Murmibhoṭyā or Lāmā. It is also very likely that, at least among some sections, the name Tāmāṅg was used as a self-designation long before 1932. However, the protogroup of the Tāmāṅg did not exhibit, for the outside observer, any striking differences from the Tibetans and the Tibetanids with regard to physical habitus, habitat, dress, religious traditions, etc. Thus the legislator, just as the bulk of the caste population in the midland areas, did not distinguish them from the Bhoṭe.

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[60] Fürer-Haimendorf 1956: 167.

[61] It would be beyond the scope of this study to dwell on the subject. Suffice it to mention that many Tāmāṅg groups locate the place of their origin in Uiseme *(dBus-kyi bSam-yas)* in Central Tibet. On the attempts to establish an etymology of the name "Tāmāṅg" from Tibetan *rta-maṅs*, 'abounding in horses', or from Tibetan *rta-dmag*, 'cavalry', and to derive "Murmi" from Tibetan *mur-mi*, 'border-dweller', cf. Macdonald 1966: 28. On Tāmāṅg myths of origin cf., i.a., Lāmā 2025 and Höfer 1975.—*tāmāṅg* or *tāmāṅ* is the usual spelling in Nepali; the correct transcription of the word as pronounced by the Tāmāṅg themselves is *tamaṅ*.

This classification was challenged when, approximately by the mid-19th century, contacts between the proto-Tāmāṅg and the caste population became more frequent. On the one hand, the proto-Tāmāṅg migrated down to the southern foothills and, on the other, many Nepali speakers, mostly Brahmins, Chetri and some Untouchables, came to the higher regions of the foothills (up to an altitude of about 1800 m) to settle there. (Nowadays the majority of the Tāmāṅg live in hetero-ethnic areas.) The demographic interpenetration brought about a cultural assimilation of the proto-Tāmāṅg to the Parbatiya castes. The acculturation in the fields of dress, house-building and agricultural techniques resulted primarily from the ecological adaptation. The general cognitive re-orientation, along with a partial Hinduisation of the pantheon and rituals, was enhanced by the growing distance to the cultural hinterland in Tibet as well as by the necessity of fitting into a new social environment politically and economically dominated by the higher castes.

A side-effect of this fitting-in process was an actualisation of the ethnic identity hitherto latent. The Twelve Tāmāṅg in the 1932 decree obviously had a lead in the acculturation, and their elite could benefit from this advantage to justify their claim to be dissociated from the Bhoṭe. They do not seem to have succeeded in obtaining, in 1932, the sanctioning of their autonomy as a caste which had de facto long been in existence within regional or local hierarchies. What they did obtain, however, was the sanctioning of the ethnic identity of the Murmi, Murmibhoṭyā and Lāmā by the official approval of the new and comprehensive appellation Tāmāṅg. As the example of the name of the Khas being changed into *tāgādhāri kṣatri* shows (cf. p. 90), the importance such "name bestowals" may have for caste identity, too, should not be underestimated.

Possibly other ethnic groups, such as the Guruṅg or Magar, have also been a product of similar differentiations, and their ethnic identity might have been reinforced or re-defined by their integration into the caste hierarchy. Be that as it may, such trends are manifest even nowadays among some Tibetanids. Thus the inhabitants of Karmarong[62] and Langtang[63] call themselves "Tāmāṅg", at least vis-à-vis outsiders, whereas other "Bhoṭe" groups claim the status of the Guruṅg.[64]

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[62] Jest 1975: 51.

[63] My own observation.

[64] Fürer-Haimendorf 1964: 25.

Conclusion

The inadequate consideration given to the ethnic groups by the MA is in conspicuous contrast to their demographic weight and cultural diversity. At least four factors account for this deficiency:

a) When the MA was conceived, many ethnic groups were more or less unknown due to their settling in areas not easily accessible. b) Many of them scarcely maintained permanent relations with the caste population and therefore a more precise fixation of their caste statuses was not a "burning" question. c) As illustrated by the examples of Dolpo and Khumbu, and even that of the Newār, intra-ethnic stratifications were sometimes incompatible with the MA's conception of hierarchy. d) Finally, the allotment of the ethnic groups was complicated by a great number of names labelling local or regional subdivisions of groups and/or castes.

Considering the general situation, it seems that the enactment of detailed status allocations was neither possible nor desirable. Obviously, the legislator intervened only in cases where he was petitioned by representatives of the people concerned. The clauses dealing with the Mecyā and the Guruṅg are two examples of this.[65] It is hardly surprising that the legislator fails to consider subjective ethnic identity in itself, for his criteria for the gradation of status are objective in the sense that they result from factual interrelations between the status bearers. As to the Guruṅg, the MA does not sanction their ethnic identity, but only their identity as a caste; on the other hand stands the fact that the sanctioning of caste identity has probably had a reinforcing effect upon their ethnic identity. As to the Tāmāṅg, the ambiguous formulation of the 1932 decree amply demonstrates how flexibly the legislator could react to changes in empirical reality.

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[65] Cf. above pp. 72f., 120ff.

XII

NATIVES AND FOREIGNERS IN THE HIERARCHY

> "Tout chez les Indiens est empreint du cachet de l'originalité et de l'indépendance: jamais ce peuple présomptueux et vain, pénétré de l'idée de sa prééminence morale, n'a pu condescendre à régler ses mœurs sur celles des étrangers, envers lesquels il n'a cessé de se tenir à la plus grande distance possible." (Dubois 1825: I, 275).

The hierarchy of the MA deserves to be called a universal hierarchy in that it includes not only the native peoples of Nepal, but in principle all peoples within and outside "Hindu humanity"[1] (and even Nature, as we have seen on p. 59). To be more exact, the MA extends the caste hierarchy beyond Nepal's frontiers to the outside world with which Nepal had contacts at that time. Thus the MA calls Nepal's own castes *hāmrā mulukkā cār warṇa chattis jāt*, i.e., 'the four *varṇa* and 36 *jāt* of our country', or *gorkhā rāj bhar mulukmā cār warṇa chattis jāt gairha*, i.e., 'all the four *varṇa* and 36 *jāt* in the whole country under Gorkhā rule', and distinguishes them from the castes of other countries under foreign rule, *wirānā rājkā mulukkā ... jāt*.[2] Among the latter are those castes which are not native to Nepal and/or represented only by a small number of residents, as, for example, the various Indian Brahmins or the Europeans living in Nepal. There is a further distinction between foreigners who are only temporary residents in Nepal and those who have lived there for one or two generations.[3] As is well-known, at that time only few Europeans were allowed to enter the country; Indian Brahmins, Muslims and ascetics, however, came as pilgrims, priests (attached to various sanctuaries) or merchants to Nepal.

Which legal status in general, and which caste status in particular, are accorded to the foreigners, and how are their relations to the native people regulated?

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[1] This term was coined by Burton Stein (1968: 80).

[2] Cf., i.a., MA p. 297 § 10, p. 673 § 14-15.—The later edition of the MA (2009, V, p. 8 § 21) speaks more precisely of *nepāl sarkārkā muluk*, 'the country under the Nepalese Government (rule)', and of *nepāl sarkārkā raiyat*, 'the subjects of the Nepalese Government'.

[3] MA p. 670 § 1-2, p. 673 § 14-15.—Let us add that the MA recognises the sovereign rights of foreign states. A murderer who flees to India or Tibet must be prosecuted by the courts of these countries; no Nepalese is allowed to capture or kill him abroad (MA p. 286 § 20).

To begin with, let us consider the position of the foreign Brahmins as has been shown above on p. 111f. in connection with the Dew Bhāju. Conspicuously, these foreign Brahmins, from the Tirhuti to the Drāwiḍ, are subsumed under the designation *madhisyā desi*, that is 'those from Madeś (Madhyadeś) and Deś'. In popular usage, the term *deś/des* (lit. 'country') also means India, whereas *madeś/mades* refers to India as well as to both the Indian and the Nepalese sections of the Terai. Obviously, the Brahmins settling in the Terai and the Indian Brahmins proper are regarded as a single category. One of the reasons may lie in the fact that many Brahmins (and other castes) of the Terai and in Northern India, though separated by the political frontier, bear the same caste name and share the same status and culture.[4]

The relatively low status position the MA accords to the Indian Brahmins is all the more surprising as many of them are, quite in contrast to the Nepalese Upādhyaya, strict vegetarians. While it can be taken for granted that the foreign Brahmins, along with the Dew Bhāju of the Newār, rank below the Upādhyaya, asal Jaisi and Rajput, their relation to the Chetri is not clear. Even if they are consistently enumerated *after* the Chetri *(tāgādhārı kṣatri)* some other passages of the MA suggest that they rank *above* the Chetri. For example, sexual intercourse, by mutual consent of the parties and without defilement through *bhāt*, between a foreign Brahmin man and a Chetri virgin or widow is not punishable, whereas, vice versa, intercourse between a Chetri man and a foreign Brahmin woman is, even if there was no defilement through *bhāt* between the two. The former case is treated as a (normal) hypergamous union, the latter as a slightly hypogamous one.[5]

In spite of their ranking below a *kṣatriya* caste, namely the Rajput, the foreign Brahmins are not only recognised as "Cord-Wearers",[6] but are also regarded as Brahmins and therefore exempted from the death penalty, just as the native Upādhyaya or Jaisi are.[7] Consequently, the rules with regard to the relations between "Cord-Wearers" and non-"Cord-Wearers" are also fully applicable to them. If a foreign Brahmin has had intercourse with a (native) untouchable woman, he, too, will be degraded and imprisoned; additionally, he will also be branded if he is resident in Nepal; otherwise he will be expelled *(deś nikālā)* after serving the prison sentence.[8]

A similar distinction, with similar consequences for the legal status, is to be found between a) the native Muslims *(nepālkā musalmān)*; and b) the foreign Muslims *(pardeśi musalmān)*, such as the Muslims from Kashmir *(kasmeri musalmān)*.[9] Just like the Muslims, the Mleccha are classified as a touchable impure caste. We may well say that there are no native Mleccha, since the MA seems to identify the Europeans as Mleccha; this term occurs, indeed, as a synonym of *kristan* or *iyuropiyen* (< Christian, European).[10]

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[4] Cf., for example, Bista 1972 b: 109ff.

[5] MA p. 659 § 2, p. 661 § 2.

[6] *tāgādhāri saraha*, MA, p. 670ff. § 1-2, 14-15.

[7] MA p. 281 § 1.

[8] MA p. 670ff. § 2, 15.

[9] MA p. 677 § 5-6.

As a general rule, foreigners rank lower in the hierarchy than the natives. Whereas this is hardly plausible in the case of the Brahmins, the classification of the Muslims and Europeans as impure castes can be explained by their killing cows and eating beef, on the one hand, and by the fact that their religions are diametrically opposed to Hinduism. That is why the ancient Sanskrit word *mleccha* is applied to the Europeans with its pejorative connotations, such as 'barbarian' or 'pagan'.[11]

There is no doubt that these phenomena must be viewed in connection with the political and cultural demarcation against India which Nepal has pursued ever since the time of King Prithwi Nārāyaṇ Śāh.[12] Until quite recently, India was somewhat contemptuously called Muglān *(< mughal/mogul)*, a term implying that it is a country "adulterated" by Muslims.[13] The distance to India is also illustrated in numerous anecdotes on status disputes that emerged in connection with intermarriages between high caste Nepalese and Indians.[14] Prithwi Nārāyaṇ's dictum has gained popularity, according to which, Nepal, and not India, is the *asal hindusthān*, i.e., the true homeland of the Hindus. It was the same ruler who warned against musicians and dancers from India and advised preventing them from entering Nepal. He also denied all non-Nepalese Brahmins and Khas entrance to the palace, asserting that they would cause disorder and corruption of morals.[15] Perhaps the MA's conspicuously severe regulations with regard to conversions to the ascetic sects (see above p. 108) also serve the purpose of a cultural insulation, for the sects mentioned are of Indian provenance.

India is complemented by Bhoṭ (Tibet) and *samundrapār*, i.e., overseas, two likewise "impure" areas. It is documented that Helambu, which also went by the name of Bhoṭ, was regarded as a place for banished and degraded persons. Thus, after Bhimsen Thāpā's fall, his relatives were degraded to the status of an impure caste and escorted barefoot to "Helambu Bhoṭ".[16]

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[10] Cf. MA p. 369 § 2, p. 379 § 1, p. 390 § 38, p. 671 § 1, p. 680f. On the status allocation of the Muslims and Mleccha, see below pp. 139ff.—The identity of the Mleccha with Christians and Europeans is also documented in the 1952 edition of the MA (MA 2009, V, p. 106ff.) and has thus outlived nearly a century of friendly relations between Nepal and Great Britain.

[11] According to the various classical sources, *mleccha* denotes, i.a., a) progeny of hypogamous unions between Vaiśya and Brāhmaṇa; b) individuals who have abandoned their *dharma;* c) persons who partake of beef; d) tribes who, with regard to commensality and consexuality, are similar to the Caṇḍāla (Untouchables); and e) certain tribes settling in countries which Brahmins are not allowed to enter (Kane 1974: 92f.; cf. also Lingat 1973: 40f.). On the Tibetan equivalents, such as *kla-klo* and *gdol-pa*, cf. Jäschke 1948: 8, 268 and Wylie 1970: 36.

[12] Cf. Rose 1971, Husain 1970, Stiller 1973, i.a.

[13] Cf. MA p. 36 § 65: *muglānā*.

[14] Emissaries looking for an Indian bride for Prithwi Nārāyaṇ Śāh claimed that the Nepalese Ṭhakuri/Rajput are "Rāṇā Rajput Sūryavaṁśī", i.e., descendants of the Indian Rājpūt, cf. Gorkhā Waṁśāwali, II: 19f. This claim is frequently quoted in other sources on Nepal, and it is noteworthy that the historian P.R. Sharma (1972: 15f.) finds no clue to it.

[15] If my interpretation of *purwa-pacchimkā khas-wāhun* is correct: 'the Khas-Bāhun of East and West' (i.e., from all regions other than Nepal); Khas seems to stand for Ksatriya here. Cf. Diwya Upadeś 2025: 28f., 34, 40.

To what extent Nepal is striving to mark herself off from these zones is shown by a number of provisions in the MA. It is prescribed that members of pure "Alcohol-Drinker" castes should not partake of "English alcoholic drinks" *(aṅgreji jāt jātko sarāph)*, most likely whisky and beer.[17] Another regulation states: Whoever falls seriously ill or lies unconscious during a stay abroad and must therefore be nursed and fed with *bhāt* and water by lower-ranking persons, is obliged to report this fact on his return to Nepal in order to obtain absolution. If such a person offers *bhāt* and water to others without having been absolved *(prāyaścit)*, his defilement will be transferred to them.[18]

What is more, the mere likelihood or suspicion of a polluting contact obliges every Nepalese to purify himself on returning from India and Tibet. This provision is explained as follows: The homecomer falls under the suspicion *(saṅkhā)* of having drunk alcohol *(raksi)* while being employed by the British Government *(a[ṅ]grejkā kampani)* or working elsewhere abroad as a labourer or servant. He is also suspected of having smoked the hookah in the presence of members of the impure castes or of having slept in one and the same tent in the company of the latter. If the homecomer neglects his purification or is not given absolution *(patiyā)*, nobody is allowed to accept water from him. The full text reads as follows:

> "(...) *a(ṅ) grejkā kampanimā bharti bhayākā wrāhmaṇ rajput kṣatri waiśya śudra gairha pāni calnyā cār warṇa chattisai jāt kohi āyā bhanyā pāni nacalnyā damai kāmisita ekai tambumā sutnyā raksi khānyā garchan bhaṅnyā kuro suṅnāle tinkā hātko bhāt pāni winā hukum caldaina* (...)".[19]
>
> And:
>
> "*bhoṭ madhyes tarpha wirānā rājmā gai uhāko nokari pipā kullimā bharti bhai talaw darmāhā khāi āunyā mānisharūle pāni nacalnyā jātsita yekai tambumā sutnyā wasnyā tamākhu gairha khānyā garchan bhaṅnyā saṅkhā hunāle pāṅiko patiyā nagari estākā hātko pāni kasaile nakhānu adālat amālwāṭa (...) patiyāko purji gari dinu dharmādhikārle li(i) patiyā dinu (...)*".[20]

We know that even Jaṅg Bahādur underwent such a purification on his return from England, from "mlеccha soil", as his biographer emphasises,[21] and the same was done by an official delegation returning from the court of the Chinese emperor.[22] Newār maintaining commercial relations with Tibet were obliged to apply for absolution until the last decades of the Rāṇā rule.[23]

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[16] Wajrācārya and Pant 2019: 75.

[17] MA p. 375 § 32. The English are considered Mleccha and therefore an impure caste. As we have seen, the MA also prescribes that pure castes of the "Alcohol-Drinker" groups may only partake of alcohol which has been produced by members of native pure castes: *āphnā mulukko pānī calnyā jāt gairhale wanāyāko jāḍ raksi khāna huṅcha* (MA, p. 376 § 34).

[18] MA p. 387f. § 29.

[19] MA p. 405 § 70. Here the text spells *damai* for *damāi*.

[20] MA p. 405 § 71.

[21] Rana 1974: 128, 134ff., 153, 156.

Quite an intricate problem was posed by the Gurkha mercenaries in the British-Indian army. According to Husain,[24] in 1908 the Government in Kāṭhmāṇḍu was against the mercenaries being attached to units in which Indian castes were also serving. In 1920 the Brahmins pushed a resolution through, according to which every Nepalese going overseas was to be degraded, except for those who were on active service; they also insisted that mercenaries be engaged only in India. As late as 1941 the Government first objected to sending to Burma those regiments of the regular Nepalese army which were lent to the British, putting forward that there was no railway, only a sea route, between India and Burma.[25] The prohibition on overseas travels and/or on staying in countries inhabited by the Mleccha is frequently adduced in the classical Indian sources of law.[26]

It is somewhat paradoxical that the demarcation from India operated even within Nepal's own frontiers. The MA distinguishes between Pahāḍ, the midland hills zone, and Madhyeś, the latter comprising both the Nepal Terai and the Indian plains,[27] and we know that until 1950 the passports of those travellers were controlled who crossed the "border-line" between the Pahāḍ and the Terai.[28] Such checkposts are also referred to in the MA, which prescribes that women below the age of 45 should not be permitted to cross the Mahābhārat range if they travel alone and declare that they are going on pilgrimage (to India?); however, they should be let pass if they are accompanied by their family and declare that they are going to the Nepal Terai *(hāmrā muluk tarāi)* for farming *(khetipāti)*.[29] The Terai's identification with Mad(hy)eś and the Terai Brahmins being classified as foreign or Indian Brahmins seem to underline the intermediate position accorded to the Nepal Terai. Although, politically speaking, part of the State's territory, culturally it is rather a buffer between India and Nepal proper, the Pahāḍ.[30]

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[22] Oldfield 1974, I: 412.

[23] Rosser 1966: 105ff.

[24] Husain 1970: 198-254.

[25] Cf. also Ishwari Prasad 1975: 68, 146, 159f., 187, 308. Even the 1952 edition of the MA (2009, V, p. 144 § 7) lays down that a soldier *(sipāhi)* employed abroad does not lose his caste provided he applies for *patiyā* on returning home.

[26] According to Kane (1974: 93ff.), the interdiction of overseas travel, *samudrayātrā*, was already in existence before Manu. It referred only to the twice-born. Individuals voyaging only occasionally or at the command of the king were absolved after an adequate expiation or purification.

[27] MA p. 45 § 26.

[28] Gaige 1975: 87ff.

[29] MA p. 161 § 14; cf. also MA p. 161 § 13 and p. 163 § 23. Such controls were also intended to stop slave trade, white slavery, etc, and checkposts could be set up more easily on mountain passes than in the plains.

[30] On the background of the MA's attitude toward the outside world cf. pp. 1f., 194.

XIII

TOLERANCE AND HIERARCHY

"Là où nous excluons, l'Inde hiérarchise et inclut."
(Dumont 1966: 332).

It has been shown in the previous chapter that the demarcation against other cultures does not prevent the legislator from including their representatives in his hierarchy of castes. To what extent is the MA disposed to tolerate deviations from the Brahmanical ideal of purity or orthodoxy and what effects do such deviations have on caste status?

Confessional tolerance

The MA guarantees everybody the right to practise his own group's religion. Everyone is allowed to perform the rites *(kām)* of his own religion *(dharma, majhap)* as has traditionally been practised in his patrilineal descent group *(kul)*. This applies to all castes, and the Muslims and Europeans *(musalmān jāt, iyuropiyen jāt)* are explicitly included. Whoever disturbs *(khalal garnu)* somebody else while practising his religion is liable to a fine of Rs 100. Somebody else's religion should not become a matter of anger *(ris)*. The killing of a cow *(gowadh)*, however, does not fall under this protective law.

> "*upādhyaya wrāhmaṇ rajput jaisi kṣatri gairha tāgādhāri jāt namāsinyā matwāli gairha māsinyā matwāli gairha jāt iyuropiyen jāt musalmān jāt choi chiṭo hālnu naparnyā pāni nacalnyā gairha jāt choyā chiṭo hālnu parnyā gairha jātle gorkhārāj bhar mulukmā gowadh garnā wāhek arū āphnā kulle gari āyā wamojim āphnā āphnā majhapkā dharma hunyā kām kurā sawaile garnu hum̐cha yas kurāmā kasaile ris nagarnu estā kurāmā ris rāg jhagaḍā bhai* [...] *arkākā majhaplāi khalal*

hunyā kurā garnyālāi 100 rūpaiyā daṇḍ garnu [...]"[1]

We see that *dharma* is used here as a wider concept, implying traditional, and therefore obligatory, caste-specific customs,[2] an integral part of which is belief or religion *(majhap)*. Strictly speaking, *dharma* means 'duty' as well as 'custom'. In another context, the term *sampradāya*, 'tradition', is used instead of *dharma* and *majhap*. It is laid down that children who died over the age of seven months shall be cremated or buried in line with their own tradition (i.e., of their parents' caste tradition; *āphnu saṁpradāya māphik*).[3]

The obligatory character of one's own tradition is revealed by the provision which prescribes that all members of the "Cord-Wearer" castes and those "Alcohol-Drinker" castes who have been initiated (invested with the holy cord), shall recite the *mantra* which have traditionally been in use (in their caste). Whoever neglects this, turning to Buddhism *(bauddha mārg)*, atheism *(nāstik mat)* or the *jhannā-pannā* belief *(jhannā-pannā mat)* will be fined with Rs 50. Whoever accepts *bhāt* from the followers of *jhannā-pannā* and then transfers the defilement to others (his fellow caste members) will be deprived of his holy cord and degraded; his property will be confiscated. The full text runs as follows:

> *"wrāhmaṇ lagāyat tāgādhāri jāt ra dikṣā linyā matwāli jāt gairhale maṁtra* [*mantra*] *sundā āphnā pitā purkhādekhi caliāyā wamojim gurūle diyākā maṁtra suṁnu japnu. āphnā purkhādekhi cali āyāko maṁtra najapi waudh* [*bauddha*] *mārg nāstik mat jhaṁnā paṁnāko mat gairha linyālāī 50 rūpaiyā daṁḍ garnu. jhannā paṁnāko āphule bhāt khāī arūlāī pani boryāko rahecha bhanyā ain wamojimko aṁs sarwaswa gari janai jhiki jāt patit garāīdinu"*.[4]

Traditional religion cannot be abandoned. This applies at least to the castes which wear the holy cord, i.e., the Hindus.[5] Let us stress that here only the conversion of Hindus to other religions is explicitly prohibited, whereas, vice versa, the conversion of Buddhists or atheists to Hinduism is not. The followers of religions other than Hinduism are only protected against intolerant behaviour and thus against coerced conversion.

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[1] MA p. 379 § 1.

[2] The German "angestammte Sitte" would be a more precise rendering of the MA's *āphnā kulle gari āyā wamojim dharma hunyā kām kurā*.

[3] MA p. 432 § 17.

[4] MA p. 389f. § 35. Here we have obviously to deal with the initiation *(dikṣā)* or consecration which entitles to wearing the holy cord. By *mantra* the formula (such as the *gāyatri mantra*, f.i.) is meant which is to be recited *(japnu)* daily. The mentioning of the "Alcohol-Drinkers" is an evident allusion to those Newār who also wear the holy cord (cf. above p. 114f.). The term *nāstik* (atheist) obviously refers to precepts, such as Jainism, etc, which from the Brahmanical point of view are materialistic or atheistic. The meaning of *jhannā-pannā* is unknown to me. The MA of BS 2009, however, gives *jhannā-ṣannā*, cf. below p. 138.

[5] It is not clear why the MA does not extend the ban on conversion to all Hindus as do all its later editions. (In another passage, the MA p. 673 § 13 and p. 677 § 1 mentions the existence of Hindus even among the impure castes.) The 1965 edition lays down that no Hindu, not even if he is a foreign national, must be converted to other religions on Nepal's territory (MA 2022, p. 223 § 1, p. 224 § 10). Cf. also below p. 188.

In this way, the MA sanctions the confessional status quo, not without leaving Hinduism the chance of being propagated by diffusion as a popular or national religion, indeed, as the *dharma* per se. At the same time, however, the MA obviously intends to ensure that Hinduisation cannot be used as a vehicle for "everybody's" social mobility. At least, the caste group of the "Cord-Wearers" was not to be "invaded" by a mass of converts. This seems to me one of the reasons behind the paragraph of the MA, laying down that nobody is allowed to wear the holy cord if he is not entitled to do so by virtue of his caste affiliation—unless the Government approves of it. This prohibition also applies to those who have received the holy cord while resident abroad.[6]

Finally, another passage of the MA deserves our attention. It prescribes that a "Cord-Wearer" who has been degraded to the status of a "non-enslavable śūdra", continues to be entitled to avail himself of the services of a Brahmin as his *purohit*. This *purohit*, however, must perform the rites on behalf of the degraded person in accordance with the rules and customs of the "non-enslavable śūdra" (and no longer with those of the "Cord-Wearers").[7] Thus, the degraded individual continues to be Hindu, even though he is reduced in rank to a sort of minor Hindu, i.e., a non-"Cord-Wearer" Hindu. Here the question arises whether a Hindu degraded to a "Bhoṭyā" (cf. above p. 124f.) may or may not adopt the caste-specific religion of the Bhoṭyā, namely Lamaism. The MA is silent on this.

As elucidated by a number of provisions, the following religions are recognised by the MA: Hinduism, Buddhism, Islam, Christianity, teachings deemed atheistic and *jhannā-pannā*.[8] Hinduism, Islam and Christianity only occur in combination with a caste or caste group: *hindu jāt*, *musalmān jāt*, *iyuropiyen jāt* or *kristan jāt*. Buddhism, however, is labelled *mārg*, lit. 'path', whereas atheism and *jhannā-pannā* are *mat*, lit. 'opinion', 'creed'. Context and terminology seem to suggest that these religions are rather looked upon as sectarian or even marginal creeds. Furthermore, it is striking that the autochthonous religions of various ethnic groups, such as the Limbu or Rāi, remain unmentioned in the MA. The MA makes no comment on the fact that a number of castes within the hierarchy profess other religions than the mentioned ones or that at least they are not "full" Hindus.[9]

Otherwise, the MA side-steps any closer definition as well as any explicit value-judgement of religions. In the light of the subsequent MA editions, Gaborieau

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[6] MA p. 390 § 34, p. 413 § 1.

[7] MA p. 382 § 16.

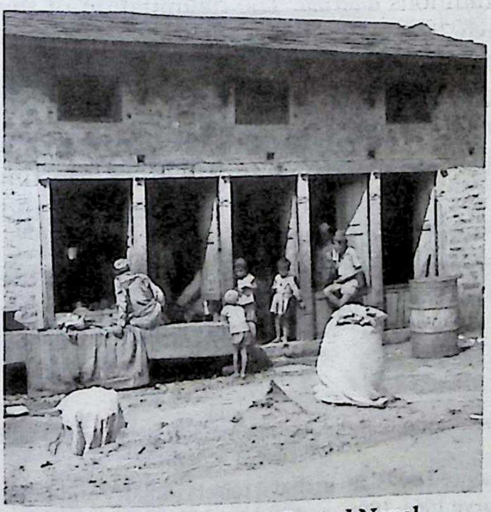
[8] MA p. 369 § 2, p. 389f. § 35, p. 673 § 13, p. 677 § 4.

[9] In fact, many ethnic groups have integrated Hindu elements into their pantheon and ritual without abandoning their autochthonous religion and/or Lamaism.—According to the Population Census of 1971 (vol. II, part 2), currently about 89 per cent of the population profess Hinduism. Of the 11,555,983 inhabitants 10,330,009 are Hindus, 866,411 Buddhists, 351,186 Muslims, 2541 Jainas and 5026 followers of "other religions".

13. A group of Gāine from Western Nepal, posturing for the ethnographer in front of a wayside inn, Central Nepal.

14. Two Gāine playing for tourists in Bhaktapur.

15. Cepāṅg girls, Terai.



16. A bazaar restaurant in Central Nepal.

17. Syārpā men watching a ceremony, Khumbu.

verifies that *dharma* above all implies the religion of the Hindus, but also Buddhism. He points to the general usage which labels Islam as *ulṭo dharma*, 'reversed (wrong) *dharma*', with an unmistakable allusion to its antagonism to the ideas and rites of the Hindus. For Gaborieau, the term *majhap* (< Arabic *mazhab)* refers exclusively to non-Hinduistic religions, and he even surmises that the legislator intended to render the Western conception of 'religion' by this term.[10]

Excursus: The confessional issue in the MA of BS 2009

The 100 years younger edition of the MA of BS 2009 contains a number of more precise definitions. Among other things, it lays down the following:[11]

Intermarriage between Hindus and Buddhists is only possible if it has traditionally been practised (by members of a specific caste). The same conditions have to be complied with if a Hindu undergoes a Buddhist initiation ceremony *(yantra dikṣā)* or a Buddhist a Hinduistic one; possibly here the marriage rites are meant. Otherwise it is forbidden to convert somebody to Buddhism or to become a Buddhist.

Hindu are called the *śiwa waiṣṇawa ādi sanātan* [...] *dharmawālā*, that is, 'the followers of Shivaism, Vaishnavism and other eternal *dharma*'. Hindu are evidently also the *ārya samāj*, *brahma samāj*, *rāmākr̥ṣṇa* (sic!), *wallabhi*, *rāmkabir* and—contrary to the MA of Jaṅg Bahādur!—also the *jhannā-ṣannā* (sic!), *nāstik* and *jain*. Conversions to these sects and confessions are not forbidden.[12]

The *kabirpanth*, *islām* and *isāi* (Christianity) are adduced as *widharmi bideśi mat*, i.e., 'a-dharmic foreign teachings'.[13] Buddhism, too, appears as *mat*, but is not labelled a-dharmic.

This distinction is apparently new, as the MA of BS 1910 still calls every denomination and caste-specific body of traditions *dharma*. The delimitation of the Hindus from the non-Hindus has obviously been exacerbated. The MA of BS 2009 also lays down that if a Hindu *(hindu dharmakā mānis)* has been defiled by a follower of a foreign, a-dharmic religion by accepting *bhāt* or water from him or having sexual intercourse with him, he will be degraded and integrated into a lower Hindu caste,—and not, as we notice, into the caste of the polluter, Muslim or Christian, etc. The members of the new caste may refuse to accept *bhāt* and water from the degraded and his offspring if they so desire.[14]

Likewise, the aforementioned restrictions regarding the investiture with the holy cord are confirmed. The.MA of 2009 prescribes that in the case of their father's untimely death, children receive the holy cord only if witnesses give evidence in court, stating the father's affiliation to one of the "Cord-Wearer" castes.[15]

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[10] Gaborieau 1972: 86ff., 91.

[11] MA 2009, V: p. 15f. § 29.

[12] Kumar (1967: 140), however, reports on the persecution of the Ārya Samāj followers in the late Rāṇā time.

[13] Kabīr's teaching is deemed to have been influenced by Islam in that it rejects idolatry and other traditional forms of Hindu worship. Cf. Ghurye 1964: 189ff. and Wilson 1958: 36ff.

[14] MA 2009, V, p. 140 § 14.

Status allocation and religion

The effect religious affiliation has on caste status will be shown by the example of the Muslims.

As we have seen, the MA distinguishes between native and foreign Muslims: the Hill Muslims (Curauṭe/Curyāḍā), on the one hand, and the Muslims of Kashmir, etc, on the other (cf. above p. 130). Are they regarded as two different castes within the category of the impure "Water-Unacceptable" castes? In the enumeration of the latter, the Musalmān come first, whereas the Hill Muslims occupy the lowest rank among the touchable impure castes.[16] Read columnwise, the following order is to be seen:

Musalmān (sic!)—Madheskā Teli (oil-pressers in the Terai)—Kasāhi (Newār butchers)—Kuslyā (Kusle, Newār)—Dhobi (Hindu Dhobi, Newār)—Kulu (Newār)—Mlech (Mleccha)—Curyāḍā (Curauṭe, Hill Muslim).

Consequently, the (foreign) Muslims would be the highest caste among the impure ones and the Curauṭe the lowest. The MA, however, contradicts this assumption by stating explicitly in another passage that it is the Kasāi who rank the highest in this caste category.[17] Moreover, it is conspicuous that in the provisions regulating sexual relations amongst the Muslims, the question of an additional defilement by accepting *bhāt* or water is not mentioned at all. Does this mean that Muslims are not considered "normal" castes? Be that as it may, whenever their external relations are dealt with, the MA treats the Muslims as one single caste. Thus it contrasts the Musalmān with the Hindu "Cord-Wearers" *(tāgādhāri hindu)* or with the impure Hindu *(pāni nacalnyā hindu)*.[18]

We also learn that contact between two Muslims is obviously not polluting, whereas contact between Muslims and Hindus is as polluting as that between Hindus of different castes can be. What is more: Contact with a Muslim through *bhāt*, water or sexual intercourse is even polluting for all Hindus in the impure castes, regardless of whether they rank higher or lower than the Muslim. Another indication of the exceptional position of the Muslims lies in the fact that such a polluting contact with a Muslim does not entail the degradation of the Hindu to a Muslim, as one would expect. Nor is the inverse possibility mentioned: the degradation of a Muslim to the status of a (Hindu) Untouchable after having intercourse with an untouchable woman.[19]

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[15] MA 2009, V, p. 23 § 1.

[16] MA p. 680f. § 17.

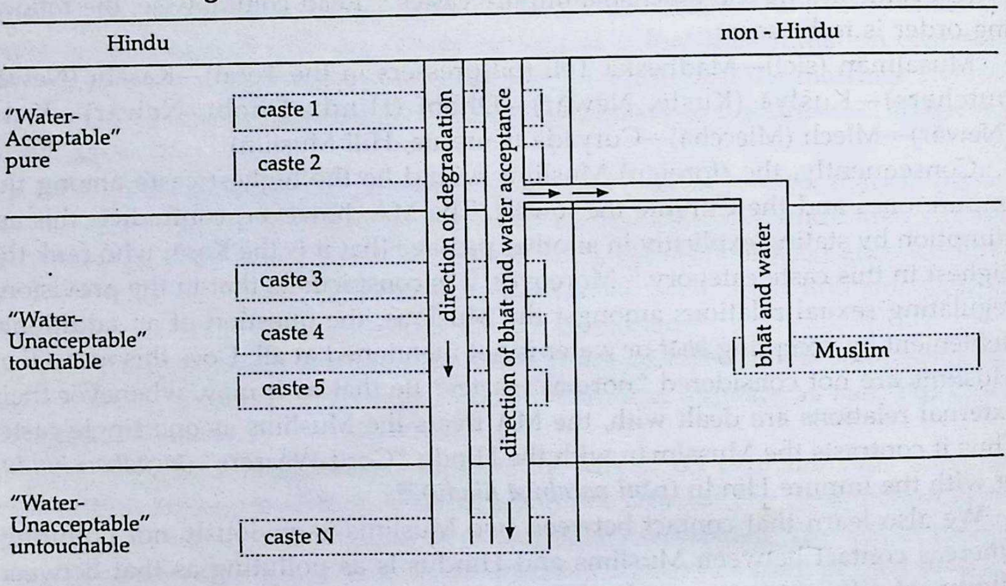
[17] MA p. 679 § 11.

[18] MA p. 673 § 13, p. 677 § 4.

[19] MA p. 677 § 4, cf. also 672 § 12.

It is Gaborieau[20] who completed these fragmentary data by further documentary evidence and his own field research. He shows that Muslims are not only horizontally separated from other castes, especially from the Hindus, but also vertically. They are an exception and cannot be fitted into the linear hierarchy. They are "Water-Unacceptable" to all "Water-Unacceptable" castes, since even the Untouchables refuse to accept water from them. On the other hand, Muslims accept *bhāt* and water only from the pure castes and are thus an exception to the principle of unilaterality (as we have termed it on p. 21f.). However, they do not rank below or among the Untouchables, for, as a matter of fact, bodily contact with a Muslim is not polluting. The following diagram (fig. 15) illustrates the position of the Muslims:

Fig. 15. The Muslim's position in the caste hierarchy


Hindu
non - Hindu
"Water-Acceptable" pure
caste 1
caste 2
"Water-Unacceptable" touchable
caste 3
caste 4
caste 5
"Water-Unacceptable" untouchable
caste N
direction of degradation
direction of bhāt and water acceptance
bhāt and water
Muslim

Gaborieau also reminds us of the fact that in India, too, Muslims are mostly classified as an impure caste and equated to the Mleccha, the main reason for this being their religion, which is *vidharma* from the Hindu point of view.[21] In fact, the position of Muslim castes in a dominantly Hindu social environment may differ according to region. Aggarwal reports on a caste in Mewat, which has been Islamised for centuries and could, nevertheless retain its *kṣatriya* status because it continued to perform some Hinduistic rites as well and to employ Brahmins for this purpose. In the same region, other old-established Muslim castes have, as craftsmen, the status of *śūdra*.[22] Another recent study on an Indian community also shows that not all Muslims necessarily rank low.[23] Kashmir, with its overwhelming Muslim majority, provides a somewhat different situation. The symbiosis between Muslims and Brahmins at the empirical level is sharply contrasted by mutually exclusive representations at the ideological level. While the pattern of exchange of goods and services between occupational Muslim groups and the Brahmins closely resembles the *jajmānī* system prevailing in purely Hindu social contexts, Brahmins and Muslims regard each other as *mleccha* and *kāfir* respectively and do not accept cooked food from each other. Madan rightly refuses "to conclude that the Kashmiri Muslim social order itself is a modified system of castes" and prefers to "acknowledge the existence of a dual social order".[24] The exceptional position the MA accords to the Muslim minority in Nepal is a particular attempt to provide this duality with a legal basis by binding together two social orders without fully denying their mutually exclusive orientations.

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[20] Gaborieau 1972: 94-104.

[21] Gaborieau 1972: 96f.

[22] Aggarwal 1971: 72ff.—That confession is not always a correlate of status is illustrated by the

In contradistinction to the Muslims, the Buddhist castes are not identified as such in the MA. Their assignment to the hierarchy does not, at least not explicitly, depend on their confession. The reasons for this can only be surmised. First of all, the contrast between the teachings of Buddhism and Hinduism is not felt as markedly as that between Islam and Hinduism; as we have seen, the MA of BS 2009 does not classify Buddhism as a-dharmic.[25] Secondly, empirical observation also confirms that in some instances it is not easy to distinguish between Buddhists and Hindus. Some Guruṅg and Bhoṭyā, adherents of Lamaism, must have undergone a partial Hinduisation already at the time of Jaṅg Bahādur. Among the Newār of the Kāṭhmāṇḍu Valley, we find numerous coincidences in the pantheons of both Buddhists and Hindus, and some castes may employ Dew Bhāju as well as Gubhāju as priests.[26] The clear-cut division between *śiwamārgi* and *bauddhamārgi* Newār castes

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Syrian Christians in Kerala. They occupy a middle position in the hierarchy, although they should normally be regarded as Untouchables because they eat beef, come into contact with alcohol and leather, etc. Yet again, conversion does not suffice for changing caste status. Thus, the Pulaya of Kerala continue to be Untouchables, in spite of their conversion by the Syrian Christians (Alexander 1972: 153ff.). On mass conversions to Buddhism among the Untouchables of Agra cf. Lynch 1968.

[23] Jain 1975: 22f.

[24] Madan 1976: 139.

[25] Gaborieau (1972: 86) is even of the opinion that the legislator considers Buddhism to be a sort of sect within Hinduism (?).

[26] Cf. Rosser 1966: 78ff.; Nepali 1965: 150ff., 167, 172, 178ff.; Greenwold 1974. The co-existence of Buddhism and Hinduism in the Newār culture of the Kāṭhmāṇḍu Valley has often been described and analysed. Suffice it here to refer to the level of symbols reflecting this symbiosis. It was Lévi who highlighted the importance of such phenomena as: a) that in Nepal's national sanctuary at Paśupatināth the *śivaliṅgam* is covered with a mask of Buddha once a year; b) that in the Nepālamāhātmyam, written before the 15th century, Buddha appears as an *avatāra* of Viṣṇu; c) that there are numerous correspondences or mutual identifications between Hindu and Buddhist deities; and d) that followers of both confessions as well as the representatives of the Hindu royal dynasty participate in the great festivals of the Newār population (Lévi 1905, II: 44f., Lévi 1905, I: 349-367). In the post-1769 era, Buddhism was tolerated only passively, whereas Hindu institutions were actively supported by state subsidies (Hodgson 1880, II:

in Jayasthiti Malla's code is missing in the MA.[27] We may thus conclude that, although all non-Hindus have a caste affiliation in the hierarchy, only in the case of the Muslims and the Christians does confession seem to operate as a chief determinant of caste status. As to the Buddhists, we can only state that their absence among the "Cord-Wearers" at the top of the hierarchy follows logically from their being non-Hindu.

It is instructive to study the distribution of various religious affiliations within the hierarchy. Buddhists (including Lamaists) are only to be found in the "middle", that is, in the caste groups "Non-enslavable Alcohol-Drinker" and "Enslavable Alcohol-Drinker". There are no Buddhists among the impure castes. Although Muslims and Christians rank lower than Buddhists, they are by no means inferior to the Untouchables. Hindus, however, can be encountered in all caste groups, even among the Untouchables.[28] Consequently, there are Hindus who are "more impure" than the non-Hindus, and this statement is valid even if we take into account the exceptional position of the Muslims. Here, too, the MA seems to have codified some segments of the hierarchy on the basis of interrelations that had factually existed before.

Moral tolerance

The diversity of caste-specific occupations, customs and customary rights or duties is greater than that of confessions in the strict sense of the term. A glance at the relevant passages of the MA reveals that practically every caste has its food taboos, marriage rules, etc, which are only partly a function of their adherence to one of the world religions, such as Hinduism or Buddhism.

Is there any hierarchical gradation of these caste-specific customs and rules as moral norms, and if so, which criteria are employed? What is the Brahmanical or orthodox ideal which, in Hodgson's view,[29] serves the legislator as a normative gauge?

Let us first stress again that the caste-specific universe of traditions, including the religious ones, is termed *dharma* by the MA in so far as they are legally sanctioned.[30] As the killing of the cow (but not the consumption of its meat!) is forbid-

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239ff.; Oldfield 1974, II: 81ff. and Lévi 1905, I: 319f.). Recently, S. Lienhard (1978) has consecrated a study to the problem of religious syncretism in Nepal.

[27] Laṁsāl 2023: 45-50, cf. also below p. 175ff.

[28] Even among the impure castes, the Hindus are recognised as such by the MA, p. 673 § 13. p. 677 § 1

[29] Hodgson 1880, II: 236ff.

[30] Unquestionably, the term *dharma* is employed in the MA in this extended sense. Thus, *dharmamā rahanu* means 'to lead a life in line with one's status' (caste status, feme's status, legal status); *āphnu dharmamā rahanyā kannyā, widhwā, sadhwā*, 'an unspoilt virgin, a non-remarried widow, a married woman who remains faithful to her husband (in contrast to a *wesyā*)'; or *gṛhastha dharmamā rahanyā tāgādhāri*, 'a Cord-Wearer who, in pursuance of his duties as a member of his

den to all castes on Nepalese territory, such a practice is obviously not considered *dharma*. The killing of the seducer of one's wife, however, (from our viewpoint murder or, at the most, a "crime passionnel") is only forbidden if the cuckold husband belongs to a caste whose members are prohibited from doing so (cf. above p. 48f.). *dharma* can "specialise", as Max Weber put it.[31]

The moral tolerance of the MA is illustrated by its attitude towards exceptional or deviant kinship patterns.

In the paragraphs dealing with incest, the MA explicitly exempts the Muslims: they are the only caste allowed to marry father's brother's daughter, that is the patrilateral parallel cousin.[32] Conspicuously, the divorce payment for a Muslim woman, Rs 100 if she is a foreign Muslim resident in Nepal and Rs 60 if she is a Curauṭe, is much higher than that for a woman of another touchable impure caste (Rs 15). Apart from these exceptions, the Muslims are, with regard to marriage and inheritance, subjected to the same regulations as all other touchable impure castes; even the gradation of the feme's status is applicable to them, although with some modifications.[33]

As to the Newār, the MA states that a woman retains her *wiwāhitā* status if she, as a divorcee, is remarried with full rites, independent of how many times she was married before. Accordingly, the amount of the divorce payment for her does not diminish. We see that, in contrast to all other castes, a Newār woman's feme's status depends on the kind of wedding rites and not on the number of males she has had intercourse with or has been married to.[34] Obviously, this regulation hangs together with the particular custom of the Newār to symbolically marry a girl before puberty to the god Nārāyaṇ, which means that her subsequent unions with human husbands are regarded as a sort of secondary marriages.[35]

Contrary to Hodgson's report from the 19th century,[36] Nepali states that since then an adaptation to the universal conception of the feme's status has taken place among most of the Newār. The woman can no longer leave her husband as easily as in the past and the divorce payment varies according to the number of men she has been married to.[37] It may be noted that this development was not enforced by the subsequent legislation, since the MA of BS 2009 confirms the provision of its predecessor.[38]

The Limbu are another exception in that the MA permits them to practise what is forbidden to all other castes as an incestuous union, namely

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caste and as pater familias, remains a layman' (instead of becoming an ascetic). Cf., i.a., MA, p. 262 § 20, p. 390 § 20. On the concept of *dharma* cf. also Lingat 1973: 258ff.

[31] Weber 1972: 26.

[32] MA p. 551 § 4-9.

[33] MA p. 677 § 5-6. Cf. also Gaborieau 1972: 86f.

[34] MA p. 645f. § 14.

[35] Nepali 1965: 106ff.

[36] Hodgson 1880, II: 235.

[37] Nepali 1965: 239, 245.

[38] MA 2009, V, p. 75 § 4.

the marriage with one's own stepmother, *sāni āmā*.[39]

The term *sāni āmā* means father's wife, but the ethnographic sources only mention levirate and sororate among the Limbu.[40] A transgenerational marriage, to which the MA seems to make allusion, is unknown today according to Sagant.[41] It is, however, practised by the Dafla settling further east to the Limbu, in the former North Eastern Frontier Agency, in that after their father's death the sons can inherit their genitor's wives except for their own mother.[42] Among the Lepcā of Sikkim, sexual relations with the wife of the father's younger brother are allowed under certain conditions.[43] Since a document dating from BS 1896 also raises the issue of stepmother marriage among the Limbu we must presume that this custom has in the meantime been given up.[44]

The practice of cross-cousin marriage is regulated as follows:

Patrilateral cross-cousin marriage with the father's sister's daughter *(phuphuko chori)* is permitted only to those castes who have practised it since ancient times *(aghi pitā purkhādekhi cali āyāko)*.[45]

However, it may be somewhat bewildering that the MA allows all castes, including the Brahmins as well, the marriage with the matrilateral cross-cousin: the mother's brother's daughter *(māmāki chori)* can be married as a virgin or widow. Likewise, it is permitted to marry one's matrilateral parallel cousin, that is, mother's sister's daughter.[46]

The MA's approval of matrilateral cross-cousin marriage for all castes is not endorsed by ethnography. As is also stated by Doherty, among the high castes this type of marriage is only practised by the Ṭhakuri (Rajput) and occasionally also by the Chetri, particularly in the Rāṇā families. To Brahmins, however, it is strictly forbidden. Doherty explains the aversion against both matrilateral and patrilateral cross-cousin marriage by stating that they conflict with the conception of *gotra* exogamy and with the hypergamous principle.[47] Roughly summarised: by matrilateral cross-cousin marriage the status declivity between wife-givers and wife-takers would be perpetuated over at least two generations. By contrast, patrilateral cross-cousin marriage would level the same status declivity by the "exchange" of women and thus negate the hypergamous principle. This is to be illustrated by the following diagrams in which the arrows represent the transfer of women.

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[39] MA p. 656 § 5.

[40] Cf. Caplan 1970: 86; Jones 1973: 213.

[41] Personal communication.

[42] Shukla 1959: 77.

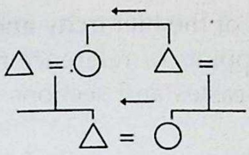
[43] Gorer 1967: 146.

[44] Nepāli 2022: 205.

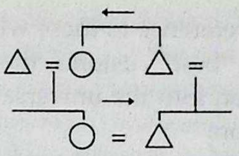
[45] MA p. 448 § 18.

[46] MA p. 444 § 3-4; p. 448 § 17; cf. also MA p. 534 § 11, p. 541 § 13, p. 545 § 12.

[47] Doherty 1974: 33ff.



a) matrilateral[48]
cross-cousin marriage



b) patrilateral
cross-cousin marriage

It seems that formerly matrilateral cross-cousin marriage had been practised even by some Brahmins, at least by the Jaisi. A decree dating from BS 1887, that is, 23 years prior to the MA, forbids the Jaisi of Bāra Hajār Sallyān to marry one's own mother's brother's daughter, granting thereby a petition submitted by the Jaisi themselves.[49] Here we are obviously faced with a turning away from a hitherto practised form of marriage which is now regarded as structurally opposing "Brahmanical standards".

We know that cross-cousin marriage has also been widespread in South India since ancient times and even practised by high castes.[50] It may therefore be of some interest to see how this type of alliance was viewed by the *dharmaśāstra* authors. Manu regards matrilateral cross-cousin marriage as incest; in other sources, too, its practice is largely condemned, as it runs contrary to the rules of exogamy based on the *gotra* and *sapiṇḍa* relations. Some authors, however, defend this form of matrimonial alliance, arguing that it is practised by the Brahmins of the South; or they offer casuistic explanations by asserting, for instance, that in the case of matrilateral cross-cousin marriage, a wife is (exceptionally) not integrated into her husband's *gotra* and that, therefore, a union between her son and her niece cannot be deemed incestuous.[51]

The aforementioned petition of the Jaisi alone shows that legislation by no means only preserves but is also willing to sanction changes in caste-specific customs. It is possible to adopt a "better" form of marriage and to have it legalised. Modifications are only blocked if they are likely to jeopardise the hierarchy as a whole with its specific gradation of norms, as is exemplified by the prohibitions of converting Hindus to other religions or of killing the cow.

Otherwise the MA fails to give any definition of which customs are "better" or "good" in relation to other "less good" ones. It contents itself with a reference to the authority of the *dharmaśāstra* without giving further specifications[52] or with an implicit reference to those who are the purest members of the hierarchy and thus have the "best" customs: the Brahmins. They are tacit points of reference for the integration into the universal hierarchy of the various castes and sections of the population.

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[48] Somewhat speculatively one may add that the cumulative effect in case (a) by giving away women over two or more generations to the same wife-taker family would lead in the long run to the formation of hypergamous sections within one and the same caste. Therefore status deficits caused by giving away daughters or sisters must be spread ("diversified") in such a way that the hypergamous principle is neither negated nor hypertrophied.

[49] Reprinted in the annex to the MA, p. 703.

[50] Cf., i.a., Dumont 1957.

[51] Kane 1974: 458ff.; Kane 1946: 876.

[52] Cf., f.i., MA, p. 444 § 5: *śāstramā lekhyāko hunāle ... huncha*, 'because it is written in the *śāstra* ... it is allowed'.

As Derrett states,[53] in ancient India customary law was recognised in two spheres, namely in the case of legal disputes in general and with regard to traditions having social or religious implications. Consequently, the customs of countries, castes, guilds and families had to be respected. The conception of *dharma* was rather an abstract ideal, a precept for righteous behaviour on the basis of the *śruti* (the Vedas) and the *smṛti* literature. It necessarily conflicted with *ācāra* and *caritra*, that is, with regional and/or customary law which was conditioned by the material coercions of daily life. Derrett also emphasises that *dharma (śāstra)* was just one of the many legal sources and that it could be nullified by the practice of lawsuit *(vyavahāra)*; both *dharma* and lawsuit could be nullified by customary law *(caritra)*, and finally all three could be nullified by a royal edict *(śāsana)*. In other words, *dharma* was a legal source per se, but in the sense of an ideal which could be appealed to in case of controversial interpretations or decisions. In reality, the *smṛti* itself drew from customary law.[54]

As stressed by Lingat, if *dharma* and custom clash, they both have their own spheres of application without suspending each other.[55] The attitude best to be called "restrictive tolerance", is also illustrated by the issue of cross-cousin marriage. Manu condemns it as incestuous, while, on the other hand, he claims that local customs must be respected. If the medieval expounders recognise this form of marriage as part of the tradition of some groups or in some regions, they do so with the admonition not to transfer (per analogiam) such deviations from the *smṛti* to other facts. Certain people may marry their mother's brother's daughter because custom is custom. From this, however, one should not conclude that mother's sister or mother's sister's daughter are also marriageable; prescinding from the interdiction in the *smṛti*, such a marriage would run counter to public opinion which, according to Manu, has to be respected.[56] Here any innovation is blocked and denied any right-constituting claim.

An at least nominal differentiation between *śāstra* and *ācāra* in Nepalese law is reported by Hodgson. He quotes competent informants who assert that "Infringements of the law of caste in any and every way fall under the Shástra; other matters are almost entirely governed by customary law (des-áchár)".[57]

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[53] Derrett (n.d.): 7-8.

[54] Derrett (n.d): 1f., 17f., 20, 37f.

[55] Lingat 1973: 200-202, 258.

[56] Kane 1962: 1264, 1270; Kane 1946: 876f.; Kane 1974: 464f. As Lingat (1973: 258) puts it, the *smṛti* "are careful to explain that wherever [*dharma*] cannot conquer custom remains queen. But custom's triumph by no means diminishes the authority of the law [*dharma*]. It can only fetter the application of the latter, perhaps only for a time".—Quite contrary to this attitude, the scholars of jurisprudence *(mīmāṁsā)* only recognise customary law if it harmonises with the *smṛti*. They either disapprove of cross-cousin marriage as incest or justify it by manipulating the *smṛti* (Derrett n.d.: 17ff.).

In the MA itself there is no distinction between *dharma*, on the one hand, and *ācāra* or *caritra*, on the other. *dharma* comprises whatever is practised with the consent of the Law, whatever one is entitled to according to one's status. It stands for 'custom', 'moral norm', 'tradition', 'rite', *(calan, thiti, sampradāya, kām)*, etc, and implies thus both *ācāra* and *caritra*. The MA does value *ācāra* and *caritra*, but not by means of a fixed scale. Whereas marrying one's stepmother is not practised by the Brahmins, it is practised by the Limbu, and from this fact it follows that it is a "less good" custom. However, it does not emerge from the context whether this custom is "such a bad" one that it is only fitting for "such a low-ranking" caste as the Limbu. (The Untouchables, if compared with the Brahmins, have "better" forms of marriage than many a pure caste, even the Limbu.) Rather, it is permitted because it was in existence prior to legislation, incidentally among the Limbu and not in any other caste, and because it was not found "so bad" as to be forbidden. Customs, just as occupation and other attributes, may provide orientational criteria, but they do not show any fixed correlation with caste status. Every attempt to interpret status purely in terms of attributes is nothing but an a-posteriori justification of the outcome of factual inter-caste relationships which are, with few modifications, codified as such by the legislator.

It is almost commonplace that tolerance is a necessary precondition of every caste hierarchy, as intolerance in the shape of a radical ethical dualism would exclude, and not include, and thus negate hierarchy itself. If the MA's attitude can be called tolerant then it is just because it refrains from stipulating fixed correlations between caste status, on the one hand, and caste-specific customs and confessions, on the other. It is tolerant not only because its hierarchy, as any other caste hierarchy, excludes nobody (has no "outcasts"), but also because even beef-eaters, such as the Bhoṭyā, and the non-Hindus are not degraded to Untouchables. The legal protection granted to everybody to follow his forefathers' traditions and the recognition of these traditions as *dharma hunyā* (here: 'incumbent'), is in line with the precept of the *dharmaśāstra*, according to which the king should not only respect but also actively maintain the traditions of his subjects.[58] In fact, the MA is as tolerant as was possible and necessary under the circumstances given at the time of its promulgation. It is flexible enough to make compromises with the immense empirical diversity, sometimes even at the risk of ambiguities or anomalies, as is shown by the examples of the Newār or the Muslims. That this flexibility was, however, preceded by some dilemmas will be shown in the next chapter.

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[57] Hodgson 1880, II: 232. On the preceding page, however, Hodgson states that the *śāstra* is consulted only in cases where Brahmins or Rajput are involved.

[58] Cf. Hacker 1957: 168ff., who calls this attitude towards the sects outside Hinduism "political tolerance". "Private tolerance", regulating the intercourse between Hindus and those who do not recognise the authority of the Vedas, is much more restrictive.

A final note on tolerance in Nepal

Fürer-Haimendorf emphasises the great ethical tolerance which, in his view, characterises Nepal's caste hierarchy. He calls our attention to specific historical and social factors and surmises that the flexible attitude exhibited towards marriage in general and inter-caste marriage in particular can be attributed to the impact that Buddhism and the cultures of the various ethnic groups had on the Nepalese caste system.[59]

Fürer-Haimendorf advocates the opinion that, contrary to India, in Nepal even widows in the higher Hindu castes are free to remarry and that sexual relations are neutral (!) because Brahmins, Ṭhakuri and Chetri are allowed to marry women from casteless (!) ethnic groups without losing their caste status. Children from such marriages do not form a subcaste (as would be the case in India, he says), but are either integrated into the caste of their Ṭhakuri and Chetri fathers or, in the case of a Brahmin father, they are recognised as Khatri, i.e., Chetri. Children of a Chetri father and a Guruṅg, Tāmāṅg or Magar mother are not Chetri with full status, *jharrā*, and are debarred from commensality with *jharrā* Chetri. Nevertheless, after several generations the progeny of these children can marry into *jharrā* families and thus obtain *jharrā* status.[60]

In the light of the MA, we may supplement Fürer-Haimendorf's observations as follows:

a) Widow-remarriage: As is well-known, the idea that a woman can marry only once and that a widow has to lead a life of virtue and penance has prevailed in India at least since Manu.[61] As to the present-day situation in Northern India, only Brahmin and Kṣatriya widows are forbidden to remarry; widows from lower castes are free to do so. Blunt estimates that about 2/3 of the population indulges in widow-remarriage.[62]

The MA does not prohibit the widow from remarrying and leaves it to her discretion whether she remains "faithful" to her deceased husband *(khasamkā satyamā basnu)* or not. Her caste is of no relevance.[63] As we have seen, even an Upādhyaya man can marry a widow who was born as Upādhyaya. Their issue, however, are not Upādhyaya but Jaisi and the widow herself is classified as a lower-ranking "Cord-Wearer", namely Jaisi.[64] The emphasis is placed not on widowhood itself but on the feme's status of the widow, which diminished due to her previous marriage.

b) Inter-caste marriage: The MA lays down that any "Cord-Wearer" can marry any "Cord-Wearer" virgin with full rites as *wiwāhitā* wife, even if she belongs to a caste inferior to the husband's. Although the children of an Upādhyaya father and a Chetri or Ṭhakuri *wiwāhitā* wife will not be recognised as Upādhyaya, they are entitled to a full share of inheritance just as those born to equal-ranking parents.[65]

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[59] Fürer-Haimendorf 1960: 14, 17ff., 31, i.a.

[60] Cf. Fürer-Haimendorf 1966: 31ff.

[61] Cf., i.a., Kane 1974: 583ff.

[62] Dumont 1966: 145f.; Blunt 1969: 64f.

[63] MA p. 445 § 8.

[64] MA p. 391 § 41.

Matrimony with a *wiwāhitā* woman corresponds to the "principal marriage" (for a man) and to the "primary marriage" (for a woman) in Dumont's terminology with regard to India.[66] In Nepal, such a union is permitted—not only beyond the border of a hypergamous section or subcaste of the caste X, but also with women of some lower-ranking castes Y and Z. Dumont emphasises that a "principal marriage" implies that the status of the woman is only slightly lower than the husband's so that their children adopt the full caste status of the father. In Nepal, this status difference may be somewhat greater, and it is only in the case of an Upādhyaya marrying a Ṭhakuri or Chetri woman that children are not integrated into their father's caste.

Undoubtedly, Fürer-Haimendorf has somewhat over-emphasised the antagonism between the "rigid" caste society in India and the "tolerant" caste society in Nepal. Although in India the ideal of caste endogamy is generally more strictly observed than in Nepal, a transgression of the limits of caste endogamy does not automatically entail the formation of subcastes. Just as in the case of the non-*jharrā* Chetri, in India, too, certain irregular unions can result in a slight decline in status for the father and his children but they are not expelled from the caste.[67]

The material of the MA hitherto discussed endorses Dumont's comments on Fürer-Haimendorf: "Regarding Nepal we may conclude [...] that marriage and status there do not on the whole contradict Indian principles, but on the contrary can be understood by reference to them."[68] In connection with the fact that in Nepal the limits of commensality are much narrower than those set to inter-caste marriages,[69] Dumont remarks: "Nepal is characterised by a systematic use of the disjunction of commensality and connubium which India of course knows, but does not, for the present, develop to anything like the same extent."[70]

One may add what Stone concludes from her study of a local hierarchy in Central Nepal: "[...] despite the very real flexibility of caste in Nepal, I doubt that Nepalese high caste Hindus have developed a new ideological stance—a view of how the world should be—which significantly differs from that of Hindu India. Furthermore [as to marriage] it appears that what is 'tolerated' is first of all elopment, and that [...] most elopments are secondary unions [*lyāitā* unions in the MA's terminology] which might suggest that the Nepalese case is close to the Indian in terms of Dumont [...]."[71]

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[65] MA p. 116 § 8-11.

[66] Dumont 1957 and Dumont 1966: 145ff.

[67] Cf. Dumont 1964: 90-98; Dumont 1966: 148f. Cf. also Fürer-Haimendorf 1964a with some modifications of his previous arguments. Fürer-Haimendorf's (1960: 31) statement that "the horror with which orthodox Hinduism looks upon the 'confusion of castes' is absent in Nepalese social thinking" is clearly contradicted by the MA.

[68] Dumont 1964: 97. Cf. also Pocock (1972: 55) who states with regard to Gujarat that "[...] violations of endogamy are more common than is often supposed. Such marriages are not necessarily secondary marriages in the sense in which Dumont has described them." Rather, "they may be regarded as normal marriages, since only the woman has come from outside and the male line is unimpaired."

[69] as is also manifest in the MA, cf. above p. 81.

[70] Dumont 1964: 98.

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[71] Stone 1977: 122.—For Fürer-Haimendorf (1960: 19f.), the unions between Rāṇā men of the Chetri caste and women from the royal family (Ṭhakuri caste), normally to be regarded as hypogamous, are another expression of tolerance. However, such alliances are limited to Rāṇā men from the highest families. Pandey (1973: 55, 57) even opines that Jaṅg Bahādur secured himself the status of a Ṭhakuri by assuming the typical Indian Rājpūt title and name Rāṇā. Perhaps it may also be argued that here we rather have to deal with unions regarded as isogamy, for the lower caste status of the Rāṇā husband is counterbalanced by his political status: after all, he belongs to the family of prime ministers de facto superior even to the king.

XIV

THE SANCTIONING OF CUSTOMS

> "The functions of Government [in ancient India] were not supposed to end with the maintenance of peace and order, but the Government must be an instrument of the diffusion of culture." (Kane 1946: 69).

The legislator not only has to acknowledge deviations, he actually has to sanction all the customs and traditions. The sanctioning is called *thịti bāndej* (< *thiti/sthiti*, 'order', 'custom', and *bāndej* < *bā̃dhnu*, 'to bind', 'to fix'). The term refers to both, to codification as a whole and to singular decrees bearing the royal seal *(lālmohor)*.[1]

Some of the subsequent examples date back to the pre-MA era and are deliberately selected to show legislation as a process set in a specific socio-historic context. The tension between the orthodox ideal and empirical reality is here not to be delineated statically but diachronically.

The custom of levirate, also wide-spread in India,[2] by which a widow is entitled to marry the younger brother of her deceased husband, offers an instructive paradigm. The classical Indian legal sources mostly condemn this custom generally known as *niyoga*. According to Manu, levirate is a bestial custom and he forbids its practice to all twice-born. Subsequent expounders allow it only to the Śūdra or—in exceptional cases—to the royal families.[3]

A decree from BS 1893 (1836) states in disgust: The custom of marrying the *wiwāhitā* wife (widow) of one's elder brother hitherto practised by all (?) castes of the country is a great sin *(ṭhulo pāp)*. Considering the fact that this country is a *jaṁgalā muluk* (a jungle country, i.e., inhabited by savages), what is done cannot be undone *(bhai gayo)*. However, henceforth only the Limbu, Lepcā (Lāpcyā) and the Jumli (people of Jumlā) are regarded as an exception. All other castes are forbidden to marry the elder brother's wife *(sākṣāt bhāujyu)*. Infringement is, according to the offender's caste, punished by banishment, degradation, cutting off the penis or by enslavement.

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[1] A *thiti bāndej* can also give legal sanction to a revenue settlement or the colonisation of a certain area, etc. A characteristic of many of them is that they confirm *(thāmnu)* something which has already been de facto in existence.

[2] Dumont 1966: 146. According to Blunt (1969: 64f.), the higher a caste the less frequent is the occurrence of levirate. Cf. also Berreman 1963: 152f. on levirate among the Pahari of Northwestern India.

[3] Cf. Kane 1974: 599-607.

> "[...] *āge hāmrā mulukkā cār warṇa chattis jāt gairha prati wiwāhitā sākṣāt bhāujyūsaṁga wirāu garna yo kurā ṭhulo pāp rahecha ājasaṁma jo jati bhayo so bhai gayo jaṁgalā muluk hunāle jātko tajwij garnu pardā hāl kirātī liṁbu lāpcyā ra jumlīharū wāhik rākhī ājadekhī uprānta jānājānī kasaile sākṣāt bhāujyū wirāu nagarnu bhaṁnyā thīti [thiti] wandhej wā̃dhi waksyaū̃* [...]"[4]

Almost two decades later, the MA regulates the matter as follows: Except for the Upādhyaya and Jaisi Brahmins, all castes are allowed levirate. Furthermore, it is laid down that from BS 1919 (1862) onwards the Rajput (Ṭhakuri) are also prohibited from practising levirate; hereby all unions are exempted from punishment which were contracted before this date *(aghiko kuro ... sadar huṁcha)*.[5]

The contrast to the decree of BS 1893 is striking. Does the MA surrender to empirical reality, that is, does it yield to the fact that levirate was obviously practised by a large number of castes in the Nepal of that time?

We see that empirical reality is not merely taken notice of by the legislator, he also attempts to modify it by setting certain standards. Two facts deserve our attention. The one is that many *thiti bāndej* decrees were obviously answers to petitions on the part of the people concerned (cf. the cases of the Mecyā and Tāmāṅg, pp. 72f., 124ff.). The second one is that some decrees of the pre-MA era make believe that the legislator was, at that time, faced with a sort of tabula rasa in the fields of customs and inter-caste relationships in a newly formed society.

Thus, in one *thiti bāndej* for the Magar of Piuṭhān, the petitioners complain: "[...] we have [hitherto] accepted *bhāt* without *cokhyān* [purifying ingredient, such as ghee] from people who rank lower than our own caste. All the other Magar have their caste regulations [*jātko wyawasthā*], we do not have any [...]."[6]

Petitions could also imply protest if the petitioners felt that their traditional customs were being arbitrarily challenged or suppressed by the central power. The Limbu, for instance, protested against a decree, dating from BS 1896 (1839), by which they were forbidden the above-mentioned marriage with the stepmother.[7] Their intervention was evidently successful, for the MA, 14 years later, explicitly exempts the Limbu from the interdiction.[8]

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[4] Reprinted in the annex to the MA, p. 701; also published in Nepāli 2022: 203.—Caplan (1970: 84) and Jones (1973: 212f.) report that levirate is still being practised by the Limbu.

[5] MA, p. 535f. § 18-21, p. 539f. § 7, 9, p. 544 § 7, p. 554 § 6.

[6] Cf. Nepāli 2022: 191 and 194f.: "[...] *āphnā jātdekhī nīckā hātko cokhyān nahāleko bhāt pani khā̃dā rahyāchan ra gairhamagarle sabaiko jātko wyawasthā cha hāmro jātko wyawasthā kehi rahena hāmrā jātkā pani thiti pāū̃dā hun bhanī* [...]."

[7] Cf. Nepāli 2022: 203-205. Cf. also above p. 143f.

Hereby it is shown that the *thiti bāndej* is not always a simple sanctioning of the status quo ante legem. It can also be the result of a dialogue, an interaction between legislation and the persons concerned. Whereas the Limbu stick to their tradition, the Magar solicit the legalisation of their "castification".[9] Many a petition tried to create the impression that the legislator had only to sanction the status quo. However, it seems that in reality the petitioners themselves produced a fait accompli, presenting it as status quo. There are some indications that the petitions for a *thiti bāndej* resulted from the initiative of pressure groups already alienated from the traditional norms of their own caste or ethnic group. The petition was meant to postulate the degree of "Hinduisation" already attained by them for the whole ethnic group (or for a local segment of such a group) and to have it legalised.

It is in this sense that we should interpret C.R. Nepāli's statement according to which the various *thiti bāndej* and *lālmohor* documents under the reign of Bhimsen Thāpa virtually met the people's wishes.[10]

A number of facts endorse our supposition that the cultural change that set in after 1769 had its basis in voluntaristic actions undertaken by local elites.[11] For instance, many of the *thiti bāndej* are not addressed to all the Jaisi, Magar, etc, but only to some of their local groups. Another proof is that the petitioners are often mentioned by their individual names.[12] Fournier reports on a delegation of the Sunwār sent to Kāṭhmāṇḍu in order to obtain permission for Brahmins to settle in their area and henceforth to be allowed to perform Hinduistic rites on behalf of the Sunwār.[13] Fürer-Haimendorf depicts in an informative way how a group split off from the Thākāli, by discontinuing participation in Lamaistic rites and by asserting from one day to the next that the Thākāli were descended from the Ṭhakuri.[14] Finally, there is a *waṁśāwali*, obviously written by a Guruṅg, which claims that Ghale and Guruṅg are of entirely different ethnic origin: Contrary to the Ghale who are said to have always been Lamaists, the Guruṅg are the descendants of Hindu Kṣatriya of Indian Rājpūt origin and it is by an historical "accident" that they lost their holy cord.[15]

Seemingly, some *thiti bāndej* only sanctioned those fissions which had been conditioned by acculturation in a group hitherto culturally and ethnically homogeneous. It is likely that even the regulation that allowed the Khas, who wear the holy cord, to assume the caste name Kṣatri/Chetri sanctioned the emergence of a particular group from among the Khas.[16] According to Fürer-Haimendorf,[17] the so-called *matwāli* Chetri near Rārā in West Nepal received the holy cord as early as 1853, that is, at the time of the MA's promulgation.

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[8] MA p. 565 § 5.

[9] As is well-known, the Limbu offered opposition against other steps, too, taken by the Government. Thus, with numerous petitions they opposed the gradual supplantation of their traditional *kipaṭ* tenure, a specific corporative form of landownership rights, being the basis of their ethnic solidarity. Cf. Caplan 1970, Jones 1973 and Regmi 1976: 98ff.

[10] Nepāli 2022: 193f.

[11] The role played by tribal elites in the process of "Sanskritisation" in India is discussed at length by Orans 1965: 40ff., 127 and Sinha 1962.

[12] Cf. also the 100 years younger decree on behalf of the Tāmāṅg, p. 124ff.

[13] Fournier 1974: 63.

[14] Fürer-Haimendorf 1966 a: 140-160.

[15] Guruṅg ghale (rājā) haruko waṁśāwali 2012: 164-167.

Another document, dating from BS 1925 (1869), alludes to the splitting off of a Hinduised group, the Rājwaṁsi, from the Koc (Koch) in the Eastern Terai. The English translation of the document reads:[18]

> "[...] Chauḍhari Bandhulal and 42 other persons belonging to the Rajvamsi community in Morang have submitted the following petition:
>
> [...] Formerly, this region was under forest, and there were no Brahmans there. All inhabitants of the region belonged to our caste. Because of our evil association with persons belonging to the Mussalman caste, who do not invite Brahmans to such ceremonies as Nwaran (naming of child) and Pasni (giving cereal food to child) but perform them according to the customs and usages of their own caste, and, moreover, use cows to draw the plow, we too have been following these practices.
>
> These days the number of people belonging to the hills and plains, as well as of Brahmans and Rajputs, has grown in Nepal. In case we receive a royal charter directing us to revere the Brahman and use bullocks [instead of cows] to draw the plow, and orders to describe us not as Koche but as Rajvamsi, we will start revering Brahmans and stop using cows to draw the plow.
>
> We therefore direct that a royal charter (Lal Mohar) shall be issued according to which (Rajvamsis) shall use bullocks, not cows, for plowing, that they should revere Brahmans, and that any person from among them who contravenes these regulations shall be fined according to law by the appropriate office or Amal".[19]

Today there are three groups to be found among the Koc in Jhāpā and Moraṅg, namely a) a Hindu group bearing the name Rājwaṁsi; b) an Islamic group, "unofficially" also calling itself Rājwaṁsi; and c) those Koc who have adhered to their autochthonous (tribal) traditions.[20]

In the period between 1769 and 1853, the legislator had obviously nourished a great deal of disproportionate expectations. The tension that existed between orthodox ideals and empirical reality is also well demonstrated by the fact that what Prithwi Nārāyaṇ Śāh had called "the genuine homeland of the Hindus" (*asal hindusthān*), namely Nepal, became 60 years later a "country of wilderness" (*jaṁgalā*

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[16] MA p. 393 § 50. Cf. above p. 90f.

[17] Fürer-Haimendorf 1971: 21.

[18] As the Nepali original was not accessible to me I quote the translation published in the Regmi Research Series.

[19] Customs 1925.

[20] Bista 1972 b: 134ff.

muluk), as we have seen (p. 151). In a *tāmāpatra* of 1802, published by Riccardi, King Girwāṇ Juddha ordered all Guruṅg, Ghale, Murmi (Tāmāṅg) as well as the Gharti to employ the Brahmins as their priests.[21] By doing so he practically postulated a sort of cultural revolution, for, as we know, not even today do all Guruṅg and Tāmāṅg avail themselves of the services of the Brahmins. Some years later, Bhimsen Thāpā had also to recognise the limits set to an all too radical legislation.

As to this problem, C.R. Nepāli,[22] too, believes that the legislator's task grew more and more difficult with the increasing number of ethnic groups and local cultures brought under Nepalese sovereignty in consequence of the country's conquest. Moreover, rulers such as Prithwi Nārāyaṇ or Raṇa Bahādur were much too engaged in foreign affairs and warfare. A serious attempt to codify the social conditions prevailing in the country could only be embarked on by Bhimsen Thāpā as late as in the period between 1804 and 1837 when political consolidation began to dawn. Thitherto, the situation of jurisdiction had been almost chaotic. Although every district had its governor *(mukhtiyār)*, he always had to consult the central government agencies before passing a sentence, even if such relatively unambiguous cases as sexual offences were dealt with. C.R. Nepāli insinuates that Bhimsen Thāpā wanted to bring about a sweeping reform of customs *(sāmājik pracalanmā pariwartan)*, aiming at a certain homogenisation or simplification. It was last but not least the traditionalistic (*kaṭṭar*, lit. 'bigoted') attitude of the population which made him lower his pretensions.[23] It is noteworthy that the author puts this proposition forth as an introduction to the aforesaid interdiction of levirate which was later treated less strictly by the MA.

Of course, the question can be put the other way round, whether there had not been disproportionate expectations on the part of the population, too. For instance, by their acculturation, some local pioneers of "Hinduisation" and "castification" might have expected a higher status position than that actually accorded to their group. We can at least suppose that there were also cases where sections of the population, chiefly the high castes, took an even more orthodox line than the legislator. We have already mentioned that the MA permits all castes the marriage with one's matrilateral cross-cousin and parallel cousin. Conspicuously, the MA almost emphatically stresses the legality of such a union, as if it had to remove doubts or even resistance. It lays down that matrimony with the mother's brother's daughter and mother's sister's daughter is not punishable even if she ranks lower than the husband. The relatives and fellow-caste members of the husband, however, are liable to punishment if they debar him from interdining after having contracted such a union. Furthermore, such cousins may even be married with full rites as *wiwāhitā*.[24]

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[21] Riccardi 1976.

[22] Nepāli 2022: 193f.

[23] Nepāli 2022: 203, 205. Surya Bahādur Thāpā, in his preface to the reprint of the MA, also thinks that the legislator was confronted in that epoch with the difficulty of harmonising customary law with the norms of the *śāstra*: "*dharmaśāstrakā mānya wacan ra rītithiti paramparālāī saṁśodhan garne prayās*"; perhaps the word *saṁśodhan*, 'purification', 'correction', is an unwittingly striking characterisation of that rigid attitude we have labelled "disproportionate expectation".

Finally, we may note that occasionally empirical reality and the orthodox ideal are closer to each other than to the MA. The provisions according to which Brahmins are allowed to plough and that the choice of occupation is independent of caste affiliation clearly show this.[25]

What has appeared as a static order in the preceding chapters now manifests itself as a dynamic process. In other words, status allocation and inter-caste relations, as laid down by the MA or by other *thiti bāndej* decrees, are the result of a series of interactions between the legislator and the people concerned. This also implies some compromises between the orthodox ideal and the cultural diversity as represented by the numerous groups gradually drawn into the orbit of a caste society. Let us stress again that legislation designed to integrate the various groups into an all-embracing hierarchy is not only a sanctioning of caste status according to fixed criteria applied to the cultural attributes that each group exhibits. Rather, legislation itself is a product of this integration, is itself a process. The dynamism resulting from the occasional conflict between orthodox ideal and empirical reality is manifest in the partly unrealistic character of the pre-MA legislation, and it is not totally absent in the MA itself. The deficiencies of the latter, such as the application of the *varṇa* model or the gaps to be observed in the status allocation for individual castes, etc, show that the MA's caste hierarchy is an open structure, open at least to interpretation.

As to the problem of tolerance, we may conclude that the MA is not guided by the orthodox tradition, rather it attempts to justify it. It does not intend to create a substantial identity with one of the numerous ancient Indian legal sources and even less with any concrete, historically definable society of pre-British India. The MA's society is an Indian society, but only one of the possible Indian societies. The śāstric sources offer only an abstract mould (or rather a terminology) to be filled with specific substance. As these sources themselves diverge in their opinions and as they themselves are often only models of past societies, which can be differently interpreted, they are all the more appropriate to be used as points of reference. The more abstractly they are presented as an ideal and an authority, the more flexibly can the legislator tackle the problem of integrating heterogeneous and hitherto dissociate cultures into his caste hierarchy.

One can hardly maintain that legislation was systematically used as an implement of cultural repression "from above". If the State interfered, it was by the executive power.[26]

Apart from a few exceptions, such as the interdiction of cow-killing, etc, legislation has by no means enforced—but only a posteriori sanctioned—cultural change.

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[24] MA p. 404 § 3-4; p. 448 § 17.

[25] Cf. above p. 92.

[26] One example is reported by Fürer-Haimendorf (1975: 127) on the Lhomi: "... it is said that around 1900 Nepalese officials came to Walongchung and forbade the practice of polyandry, and that since then marriages have been monogamous."

That it indirectly encouraged cultural change cannot be doubted, however. It motivated adaption to the norms it propagated either by providing social mobility with the vehicle of "Hinduisation" ("Sanskritisation") or, indirectly, by deficient codification of customary law, thus leaving the latter in an authority vacuum.[27]

The effect such lacunae have had is illustrated by the case of the Limbu. As perhaps no other ethnic group in Nepal, the Limbu succeeded in safeguarding their autonomy under the legal guarantees of the central power. If their social system has nevertheless undergone a long-term transformation this is, among other things, due to the fact that "written law" had not properly considered the individual elements of this system. The former custom of marriage by "kidnapping" the bride was abandoned by the Limbu because neither the institution itself nor its economic implications (prestations to the bride's family, etc) were sanctioned in the Nepalese codes. Or: formerly an incestuous union automatically entailed the formation of a new clan with the detected couple as its founders. Today, however, the persons involved are outlawed because the "written law" failed to legalise explicitly the original ethno-specific solution to the conflict. Last but not least, the headmen of the Limbu themselves took an active part in furthering the acculturation process.[28]

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[27] There must have been cases in which this acculturation process was simply conditioned by what Orans (1965) in his study on the Santal in India has called the "rank concession syndrom", i.e., the subjective acknowledgement of the political and technological superiority of the surrounding Hindu society without any strong and enduring constraints on the part of the latter.

[28] Both examples given by Sagant 1976 a: 161ff., 167ff.; Sagant 1976 b: 280ff. On "Sanskritisation" among the Limbu cf. also Jones 1976.—With regard to abduction, we find in the MA (p. 456 § 2) the following provision: A man of any of the non-"Cord-Wearer" castes who abducts a virgin of his caste is to be fined Rs 20. On paying the fine he may marry the girl, provided her parents consent to the union. However, if the girl was abducted with her consent (against the will of her parents) the man is not to be fined and the parents do not have any claim on their daughter. The latter situation seems to be close to the Limbu case where the kidnapping of the bride is staged as a matter of convention rather than real abduction. Cf. also Sagant 1969.

XV

THE CHANGE OF CASTE AND THE QUESTION OF MOBILITY

> "Pollution is a well-defined and clinging state of being. Purity is more evanescent and fleeting. It is the achievement of a transient elevation rather than any lasting presence of grace."
> (Mandelbaum 1970, I: 192)

It is empirically evident that in every caste hierarchy there is a certain mobility.[1] What chances does the MA offer to mobility within the framework of its hierarchy?

At first sight, it appears as if the MA allowed only individual and downward mobility, that is, a change of caste status by degradation.

Degradation *(patit)*

Generally speaking, the MA seems to distinguish between two types of degradation: a) exclusion from the *bhāt* commensality, disjoined from b) exclusion from one's birth-caste *(jātbāṭa patit hunu)*. Both can be imposed temporarily or definitely, as the diagram shows. A temporary degradation, a sort of interdict, is called *haṭak* (< *haṭāunu*, 'to remove'). It is effective from "the start of the proceedings" until the person's rehabilitation and purification *(patiyā, prāyaścit)*. Thus the MA lays down that *śuddha hunyā ṭhaharyāko patiyā nahuṁji bhāt pānimā pharak rahanu*, that is, the person under interdict "must remain isolated *(pharak)* as far as acceptance of *bhāt* and water is concerned until he regains his caste status *(patiyā)* and becomes pure *(śuddha)*".[2]

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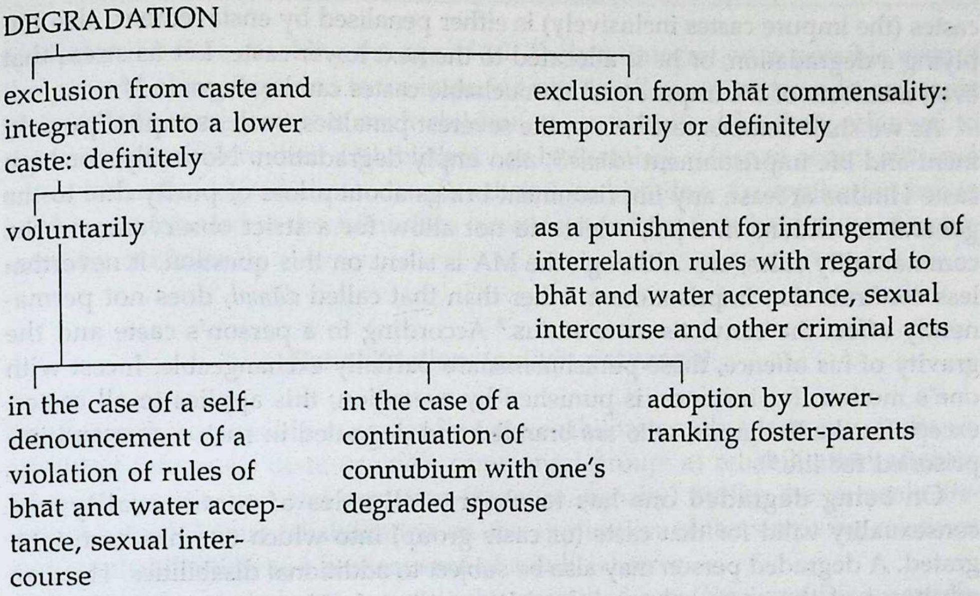
[1] For a detailed discussion of mobility in India cf., i.a., Barber 1968.

[2] MA p. 404 § 68. In the sense of 'to degrade', 'to lose one's caste status' the MA also employs expressions such as *jāt jānu* ('caste' + 'to go'), *jātwāṭa khasālnu* ('to let fall from caste'), *jāt wāhek garnu* ('to exclude from caste'). The expression *jātmā milāunu* (< *milāunu*, 'to settle', 'to adjust') is used for the integration of a degraded person into his new caste or caste group.—On degradation and excommunication in India cf. Dumont 1966: 227-229 and Mandelbaum 1970, I:


DEGRADATION
exclusion from caste and integration into a lower caste: definitely
exclusion from bhāt commensality: temporarily or definitely
voluntarily
as a punishment for infringement of interrelation rules with regard to bhāt and water acceptance, sexual intercourse and other criminal acts
in the case of a self-denouncement of a violation of rules of bhāt and water acceptance, sexual intercourse
in the case of a continuation of connubium with one's degraded spouse
adoption by lower-ranking foster-parents

Juridically speaking, voluntary degradations have to be distinguished from those ensuing from penalties. Someone who has violated the rules of consexuality and commensality is degraded without any additional punitive measures if he himself denounces the offence to the court (*adālat*, etc).[3] Caste status can also be abandoned voluntarily by continuing to live together with one's spouse who has been degraded or by being adopted by foster-parents of lower status. In both instances, the renouncing of caste status must be registered officially.[4]

Penal degradation comprises several degrees, as both the gravity of the offence and the offender's caste are taken into consideration. In any case, however, the offender has to have his head shaved and to take food which is not in accordance with his original caste's diet rules (*abhakṣ khwāunu*). Thus, the legal act of degradation is emphasised (or made definite) by a forcible pollution.[5] The branding (*khodnu*) of the offender is an additional penalty and means a person's degradation to the status of an impure, "Water-Unacceptable" caste. Degradation without branding in most cases entails the offender's integration into the next lower caste group: a "Cord-Wearer" thus becomes a "Non-enslavable Alcohol-Drinker" (*śudra*), whereas a "Non-enslavable Alcohol-Drinker" will, in turn, become a "Bhoṭyā", that is, an "Enslavable Alcohol-Drinker". A member of the enslavable

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294ff. Mandelbaum points to two kinds of temporary excommunication or isolation: a) the person concerned is "boycotted" by ritual specialists and craftsmen, but he is not deprived of his caste status, and b) he is expelled from his caste, but only for a certain number of years. This last possibility is not mentioned in the MA.

[3] MA p. 614 § 1. Cf. also above p. 25.

[4] MA p. 149 § 14.

[5] Cf. p. 17.

castes (the impure castes inclusively) is either penalised by enslavement, also implying a degradation, or he is allocated to the next lower caste. Let us stress that even members of the impure and untouchable castes can be degraded.[6]

As we shall demonstrate below, the severest penalties, such as capital punishment and life imprisonment *(dāmal)*, also imply degradation. Normally, for high caste Hindus at least, any imprisonment brings about a loss of purity due to the general conditions in a jail, which do not allow for a strict observance of the commensality rules, etc. Although the MA is silent on this question, it nevertheless confirms that imprisonment, other than that called *dāmal*, does not permanently affect the convict's caste status.[7] According to a person's caste and the gravity of his offence, these punishments are partially exchangeable. Incest with one's mother, for instance, is punished by execution; this applies to all castes, except for the Brahmins, who are branded and degraded in such a case and imprisoned for life.[8]

On being degraded one has to observe all rules of commensality and consexuality valid for that caste (or caste group) into which one has been integrated. A degraded person may also be subject to additional disabilities. Thus, an adulterer of the caste groups "Cord-Wearer" and "Non-enslavable Alcohol-Drinker" who has been excluded from commensality is barred from being employed in public service *(sarkārko jāgir)*.[9] Nevertheless, in some instances, the integration into the new caste does not become fully effective until the second generation. Thus, the MA lays down that someone who has been degraded to an enslavable caste *(śudra)* is not to be punished by enslavement if he incurs another penalty after his degradation; this, however, does not apply to children of his born after the degradation.[10]

The new caste status of the degraded person is, of course, transmitted to those of his children who were conceived or born after the degradation (cf. above pp. 58f.). If a pregnant woman is degraded the child born from this pregnancy automatically assumes the mother's new caste status. Children born prior to the degradation of their parents and who, due to their infancy, live with their degraded parents, can be re-integrated into their original caste and obtain *patiyā* if they apply for it before reaching the age of 16. Their re-integration is possible even if the parents were degraded to an impure caste. In all cases, two conditions must be fulfilled, namely a) that such children are re-admitted by their relatives to commensality before their 13th birthday or b) that they refuse to accept *bhāt* and water from the degraded parents after their 13th birthday. An application has to be brought forward to the authorities concerned and the facts have to be corroborated by evidence.[11]

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[6] MA p. 275 § 15.

[7] Cf. MA p. 574 § 8 on sexual intercourse between the inmates of a prison. Cf. also MA 2009. V, p. 21 § 47.

[8] Cf. MA p. 526 § 1 and the following paragraphs, p. 297 § 7.—The MA refers to both *jiu jānyā dāmal* and *janmabhar kaid hunyā dāmal*. From this we may conclude that *dāmal* is used for life-imprisonment *(kaid)* as well as for capital punishment *(jiu jānu)*. Cf. MA p. 176 § 19-30; p. 181f. § 1, 4-6, p. 456 § 1, p. 613 § 2. However, according to the dictionaries of Turner and Śarmā, *dāmal* means only life-imprisonment, accompanied by branding and shaving the head of the culprit.—It depends on the gravity of the offence whether or not the degradation of the *patit* type entails *dāmal*. The MA also prescribes *dāmal* to a recidivist who, after his degradation, again commits a delict for which normally the same kind of degradation ought to be inflicted on him (MA p. 212 § 1-3).

[9] MA p. 631 § 7.

[10] MA p. 360 § 17.

Rehabilitation *(patiyā, prāyaścit)*

There are three possible ways leading to rehabilitation, that is to say, to be re-admitted into one's caste or one's commensal group: a) rehabilitation after an adequate purification and expiation (penance, penalty) during the person's lifetime; b) posthumous rehabilitation on the application of the surviving relatives; and c) rehabilitation as a consequence of a judicial error.

Under (a) are subsumed: unwittingly committed acts *(bhor)* requiring a purification, on the one hand, and less grave offences which are punished by fining and expiated by a penance, such as a pilgrimage, etc. Under certain circumstances, an accomplished degradation can be annulled by proper expiation: Should the degraded person go to war for his king and be prepared to sacrifice his life if necessary *(maraulā bhani)*, he may then be rehabilitated. That is why this type of rehabilitation is called *dehānta prāyaścit*, "death absolution". The fact that the degraded man is ready to face risks and sufferings, has obviously an expiative effect, for the MA also employs the term *taksir māph*, lit. 'offence' + 'remission', in this respect. Grave offences, however, cannot even be annulled by "death absolution". This is the case, for instance, if the offence entailed branding and degradation and if the culprit was compelled to partake of *abhakṣ* (e.g., the Brahmin to drink alcohol). Likewise excluded are offences such as the acceptance of *bhāt* and water from a member of any of the impure castes and sexual intercourse with an untouchable woman.[12] A degradation as a consequence of a judicial error (c) can also only be rescinded completely if the degradation was not accompanied by a forcible feeding with pork or alcohol.[13]

The "death absolution" represents a kind of transition to posthumous rehabilitation (b). This can be obtained even in the case of the most severe punishments, such as the death penalty, life imprisonment *(dāmal)* and degradation. In fact, it is even prescribed on behalf of a person who committed suicide. The deceased person can be granted *patiyā* at the relatives' request and against payment of a fee, called *godān* (cf. p. 168), says the MA. Only then may his death rites be performed in accordance with the customs of his birth-caste. This posthumous rehabilitation is called *kṛyā śuddhako patiyā* by the MA, that is, '*patiyā* [re-admittance into caste] for the pure death rites'. The necessity of applying for it proves that capital punishment, life imprisonment and even suicide entail the loss of caste status, just as (normal) degradation *(patit)* does.[14]

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[11] MA p. 288 § 30.

[12] MA p. 386 § 25-26. The classical sources of Indian law, too, tolerate certain exceptions. For instance, a Brahmin accused of having lived among the Mleccha can be rehabilitated if it is proved that he was forced to do so, e.g., as a prisoner of war (Kane 1974: 387-389). The Manu Saṁhitā (1909: 410ff.) states that a degradation can be rescinded by proper penance.

[13] MA p. 385 § 24. Cf. also below p. 169.

In connection with the death penalty, the MA speaks of *prāyaścitko patiyā*, i.e., the re-admission to the caste *(patiyā)* by way of absolution *(prāyaścit)*.[15] It is remarkable that, whereas the MA accomplishes rehabilitation through a particular legal act, several classical Indian sources ascribe an automatically expiative effect to the execution itself, leading to the culprit's redemption.[16] Thus, according to the Manu Saṁhitā, "[...] men punished by the king, become free from impurity and go to heaven after death as honest and virtuous men do", and the same effect is attributed to a suicide committed for the sake of penance.[17]

Now, what possibly complicates the matter is that—irrespective of the manner of dying—every deceased person, who has become "blissed" *(sadgati)* by virtue of the death rites performed for him, loses, to all appearances, his caste status. At least one paragraph of the MA could be interpreted in this way: There it is laid down that a person believed to be dead does not lose his caste *(jāt jādaina)* if he reports back to his home after his funeral has been performed in his absence. For re-instating him by a purification *(śuddha)*, a pilgrimage and a subsequent banquet *(tirtha bhoj)*, to which he invites his fellow-caste members, are sufficient.[18] Be that as it may, there is an intrinsic connection between death and degradation. For instance, in South India, the expulsion of a Havik Brahmin from his caste is accompanied by the performance of his mock-funeral.[19]

Upward mobility

The chances the MA offers to an individual to exchange his original caste status against a higher one are apparently very small and of more or less theoretical nature.

We have already seen that slave emancipation most probably excludes the slaves who belong to the impure castes from becoming Gharti, i.e., members of a pure caste (p. 104f.). Whether the initiation to one of the ascetic sects may be regarded as a legal means of upward mobility cannot be decided. The ethnographic record corroborates what emerges from the context of the MA, namely that the ascetics are recruited from among the "Cord-Wearer" castes. The MA is silent on the question whether or not members of the "Alcohol-Drinker" castes are permitted to become ascetics and thus promoted to "Cord-Wearers" (cf. p. 107). The suspicious attitude the MA exhibits vis-à-vis the ascetics might have one of its roots in the fear of uncontrolled mobility which would make it possible even to an Untouchable to obtain access to the ranks of the pure castes.

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[14] Cf. MA p. 380ff. § 8, 10, 12, 14, p. 438 § 47.—Oldfield (1974, I: 243f.) reports on the 19th century that persons who had been executed were not given a funeral and that their bones were visible at the place of execution a long time afterwards. The fact that executioners used to be recruited from the untouchable Poṛe caste, may also be seen in connection with the degrading effect of capital punishment. Cf. also Hodgson 1880, II: 224 and Gorkhā adālati śikṣā 1896: 32, 34.—On *kṛyā śuddha* cf. also the MA of BS 2009, V p. 143 § 4.

[15] MA p. 381 § 10.

[16] Cf. Lingat 1973: 234, Kane 1953: 65ff., 72f., 103.

[17] Manu Saṁhitā 1909: 399.

[18] MA p. 439 § 53: "[...] *pharki āunyāko jāt jādaina tirthyā bhojle śuddha bhai āphnā jātmā rahancha* [...]."

[19] Harper 1964: 167.

Adoption, by contrast, seems to imply a chance to upward mobility, since the MA lays down that foundlings of unidentified caste affiliation may obtain the caste status of their foster-father, provided the latter is not a Brahmin.[20] If, however, the adoptee's caste is known the foster-parents are obliged to bring him up in accordance with the traditions of his birth-caste (cf. p. 54f.).

All the possibilities hitherto mentioned refer to individual mobility. As to the chances of collective mobility, there are no indications whatsoever found in the MA. There is no right derivable from the law which envisages a re-allocation of status. Such a situation could arise, for instance, if a caste had modified its customs and relations to other castes, ceasing to accept *bhāt* from certain other castes, etc. Nor is mention made of whether the king (the State) is entitled to modify the status of a caste.

This tendency seems to be at variance with the ethnographic evidence, according to which certain castes are reported to have been "promoted" or "degraded" by royal edicts. In pre-British India, the king occasionally exercised his right to change a caste's status in order to bestow a favour on it or to punish it.[21] In Nepal, the Newār caste of the Dūyiyā̃ is said to have been promoted by Prithwi Nārāyaṇ Śāh from an untouchable to a pure caste in acknowledgement of their alleged assistance in the conquest of the Kāṭhmāṇḍu Valley.[22] I was also told that the Kasāi butchers had been similarly raised from an untouchable to a touchable impure caste. The Jaisi Brahmins, by contrast, are reported to have undergone a sort of collective degradation. Because some of them had been involved in a conspiracy, Prithwi Nārāyaṇ Śāh decreed that a Jaisi had to greet others and to be greeted by others by a simple *salām* (raising one's right hand). Contrary to the Upādhyaya Brahmins, one should not prostrate oneself before a Jaisi nor touch his feet with one's head *(jadau, pāumā lāgnu)*. Likewise, a Jaisi is forbidden to perform the *homa* rites *(swahā)*.[23] In reality, the decree did not degrade the Jaisi but rather confirmed their status as it had existed thitherto.[24]

The case of the Kasāi, too, requires a clarifying note. It is quite possible that they have never been Untouchables. Unlike the MA (cf. above p. 72), Jayasthiti Malla's Code forbids them to sell milk to higher-ranking castes.[25] It seems that Prithwi Nārāyaṇ Śāh only suspended this interdiction and that this act was then interpreted as an abrogation of their (never really existing) untouchability.

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[20] MA p. 121f. § 29-30.

[21] Srinivas 1966: 93.

[22] Nepali 1965: 173 ("Dunyeeyan"), cf. also 175 on the Mānandhar.

[23] Wajrācārya n.d.: 15f., quoted from Diwya Upadeś.

[24] Among the Newār, too, there is a caste called Josi or sometimes Jaisi. As to their position within the Newār hierarchy, they are comparable to the Jaisi (asal Jaisi) among the Parbatiya. They

With reservation of future research, much seems to prove that entire castes relatively seldom underwent modifications of their statuses in the post-1769 era. In the MA itself, the State undoubtedly retained certain privileges, by virtue of which changes of caste status could be sanctioned a posteriori. Suffice it to mention here the State's right to bestow the holy cord upon someone who is not born to a "Cord-Wearer" father (cf. p. 136). Otherwise, the MA seems to content itself with certain corrections, which are presented as adjustments or clarifications, rather than as innovations. A typical example is that of the Mecyā (p. 72f.). Other examples are the suspension of enslavability for some of the Newār castes or the abolition of levirate for the Ṭhakuri (cf. p. 152). On the whole, the MA pretends to codify a quasi natural status quo, and when reading its provisions on caste, one is inclined to believe that the legislator more or less limited himself to reinforcing, legally sanctioning the existing order—which is not always the case of course. Paradoxically, as has been shown in the previous chapter, it is this very attitude which enables him to accept and sanction certain steps achieved in upward mobility, provided that the result of this mobility is presented not as a change but as part of the existing order.

One of Jaṅg Bahādur's decrees, dating from BS 1920 (1863), is exemplary for the importance of the above-mentioned corrections. The decree *(lālmohor)* refers to the fact that the people addressed had earned great merits during the wars against Tibet and in Lahore (i.e., during the Great Mutiny in 1857). In recognition of this fact, the decree accords a tax reduction to the Ṭhakuri and allows the Magar to be admitted to the old elite troops of the Nepalese army *(purānā rojā palṭanmā bharti)* and even to be promoted as high as the rank of *"karnel"* (< colonel). It is stated that those Newār castes which have been classified as enslavable as well as the Limbu-Kirāti should no longer be punished by enslavement. Furthermore, the Limbu-Kirāti may henceforth serve in army regiments which are set up especially for them (?) *(sipāhi tulyāi palṭan khaḍā gari)*.[26]

At first sight, the decree simply bestows upon the Limbu a higher social prestige by admitting them to the army and by abolishing their enslavability. In reality, however, it tacitly lifts the Limbu by one caste group higher and promotes

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wear the holy cord and are chiefly known as astrologers *(josi < jyotiṣ)*. According to Jayasthiti Malla's Code, they are *apujya*, 'non-venerable', and are debarred from acting as *purohit*. Cf. Laṁsāl 2023: 38f., Nepali 1965: 156f. and Petech 1958: 183.

[25] Laṁsāl 2023: 46. Cf. also below p. 175f.

[26] Quoted in Rāṇā and Wajrācārya 2029: 35f.—According to B. Ācārya (2022: 121, 144), the Guruṅg were enlisted in Prithwi Nārāyaṇ's army in higher ranks than the Magar. Oldfield (1974, II: 3-4) reports that, as early as during the war against Tibet in 1855-56, there had been a regiment of Kirāti soldiers.

them to "Non-enslavable Alcohol-Drinkers".[27] Characteristically, the decree leaves their interrelations with other castes with regard to, say, *bhāt* acceptance or intermarriage, unchanged.

Mobility and hierarchy

It clearly emerges from what has hitherto been said that upward mobility is restricted by the law. However, it is likewise obvious and plausible that downward mobility, too, is subject to restrictions. This is proved by the various possibilities of rehabilitation an individual has and by the impossibility of a collective degradation of entire commensal groups.

Irrespective of the partially opposing evidence given by empirical reality (i.e., that there is mobility), these restrictions are inherent in the hierarchy. All too frequent changes of status (upwards or downwards) would ultimately have the same effect as an excessive permeability of the demarcation lines between the individual castes: a levelling of status differences and a negation of karmic morality. Any legal provision ensuring the allocation of a higher status to any caste which is prepared to change its customs and interrelations to other castes accordingly would, moreover, challenge the status quo which the MA tacitly poses as an order emanating from eternal *dharma*—not to mention the immediate political and economic repercussions.

It was the *smṛti* sources which already laid down that one of the principal functions of the kings consisted in their preventing the four *varṇa* from miscegenation *(varṇasaṁkara)*.[28] It was obviously feared that such an intermingling would lead to the formation of new sub-*varṇa* and thus disturb the status quo. As the Manu Saṁhitā puts it: "[...] intermixture of castes is the primal cause of vice and leads to universal destruction."[29] According to Rocher, most of the classical sources agree that a change of one's *varṇa*, that is, a change of *varṇa*-specific occupations, can be accomplished only in the case of emergency and only temporarily. There is one further condition: one may only pursue the occupation of the next higher *varṇa* or of the next lower *varṇa*. A *śūdra* may only pursue the occupation of a *vaiśya* and vice versa, whereas a *kṣatriya* is only allowed to pursue that allotted to the *vaiśya*, but not that of a *śūdra*. However, even in the case of emergency, nobody is permitted to "become" a *brāhmaṇa*.[30]

There is one possibility of individual upward mobility which the *dharmaśāstra* sources mention under the name *jātyukarṣa*. According to Gautama, the status of a Brahmin can be obtained by several consecutive hypergamous marriages. Thus, for eight generations, female descendants of a Brahmin man and a Kṣatriya woman have to be married to Brahmins before the children in the ninth generation will be recognised as (genuine) Brahmins.[31] According to the Manu Saṁhitā, the same is possible even for the progeny of a Brahmin man and a Śūdra woman.[32]

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[27] The MA of BS 2009, V, p. 92f. § 43 groups the Limbu together with the Guruṅ, a caste which in Jaṅg Bahādur's MA belongs to the "Non-enslavable Alcohol-Drinkers".

[28] Kane 1974: 50ff.

[29] Manu Saṁhitā 1909: 277.

[30] Rocher 1975: 145ff.

In the Nepalese case, the Chetri represent a variant of such a status correction within the framework of individual mobility. If a Chetri marries a woman who is a) herself Chetri but not *wiwāhitā*, or b) comes from a lower-ranking caste, their offspring are not *jharrā*, i.e., not "genuine" or "pure" Chetri. However, the male children from such a union can secure the *jharrā* status for their own children or grandchildren if they succeed in marrying a *jharrā* Chetri woman.[33] The MA makes no mention of this opportunity.

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[31] Kane 1974: 61ff.

[32] Manu Saṁhitā 1909: 273f.

[33] Fürer-Haimendorf 1966: 31-34.

XVI

PURIFICATION, PENANCE AND PENALTY

> "(The observance of) one's own special duty leads to heaven and endless bliss. In case of its transgression, people would be exterminated through (the) mixture (of duties and castes)."
> Arthaśāstra (Kangle 1972: 8)

The violation of the interrelation rules as well as incest are sometimes called *pātak* by the MA.[1] Otherwise, there are no indications whatsoever of a categorical distinction between caste-relevant offences and other criminal acts, such as murder or theft, etc. The terms *khat* (used most frequently) as well as *aparādh, taksir, doṣ, wirām (birām)* are, to all appearances, employed indistinctly in the sense of 'punishable act'. In the same way, *bhor* (mistake, unawareness) is acknowledged and *prāyaścit* (absolution) is to be administered not only in connection with breaches of caste rules but also with other acts.

In the previous chapters (cf. pp. 17-59), we frequently distinguished analytically between social and penal consequences. Under social consequences we subsume degradation or exclusion from the commensality without any additional penal measures, such as fining, imprisonment, branding, etc—in short: cases, in which the legislator himself states that they are not regarded as *khat*, that is to say, punishable by the authorities of the State. However, if they are not punishable acts (in this sense), are they at least sins? What is penalty and what is penance for the MA?

A systematic analysis of this problem would certainly be beyond the scope of the present study. Let us therefore content ourselves with a few comments.

In the MA's terminology, *patiyā* stands for 'rehabilitation' in the sense of a readmittance to one's caste, and *prāyaścit* means 'absolution' from a guilt. *prāyaścit* is thus the redemption from the consequences of a consciously committed offence, whereas *patiyā* is either the consequence of a *prāyaścit* or it redeems from the results of an offence committed unintentionally.[2] Someone who has polluted himself by mistake *(bhor)*, will obtain *bhorko patiyā*, and by this legal act his pollution will be nullified.

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[1] Cf., i.a., MA p. 382 § 17, p. 444 § 5.

Although this distinction between *patiyā* and *prāyaścit* holds good in principle, sometimes both terms are employed as synonyms. Many a context suggests that even erroneously committed actions require atonement and that, consequently, *patiyā* can only be obtained by expiation. Let us examine some examples:

Case 1: If members of impure castes and pure castes pluck fruit from the same tree at the same time, there is no defilement and no breach of the interrelation rules. The MA explicitly states that in such a case neither *patiyā* nor punishment *(daṇḍ)* are necessary.[3]

Case 2: Case of emergency. If the funeral of a "Cord-Wearer" had to be performed by a lower-ranking person, since none of the deceased person's relatives was available, neither *patiyā* nor *prāyaścit* are necessary; a *godān* must, however, be given *(wrāhmaṇlāi godān diyā garnu patiyā prāyaścit pardaina)*.[4] Does the *godān* given in order to purify the corpse after the event imply an expiation?

Case 3: Mistake *(bhor)*. If someone has erroneously used the hookah of someone else, from whom he is forbidden to accept *bhāt*, he can obtain *patiyā*. In order to obtain it he has to have a "certificate of mistake" *(bhorko purji)* issued by the authorities against payment of a fee *(dastur)* and then has to go on a pilgrimage.[5] The fee is not to be regarded as a fine *(daṇḍ, sajāya)*. The obligation to go on a pilgrimage, however, poses the same problem as that of the *godān* donation in case 2. It is well known that pilgrimages are at the same time a means to purification and absolution from sins.[6]

Case 4: Mistake *(bhor)*. If a member of one of the pure castes has erroneously married a woman of one of the impure castes (i.e., because he was unaware of the real caste of his wife), he can obtain *prāyaścit* (sic!) after the dissolution of this marriage as prescribed by the law. He will not be liable to any punishment *(khat lāgdaina)*.[7]

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[2] Cf. also Śarmā 2019: 603.

[3] MA p. 374 § 27. Cf. also above p. 31.

[4] MA p. 426 § 1. For the MA's tolerant attitude towards cases of emergency cf. also above pp. 34, 66. Numerous other instances can be quoted. Thus, for the purpose of treatment, even medicines containing water may be accepted from a member of the impure castes; no *prāyaścit* is necessary (MA p. 335 § 18). Similarly, women who quarrel with each other *(jhagaḍā)* may be touched by anybody who wants to separate them, whether he belongs to a higher or lower caste or even to an impure caste (MA p. 264 § 8). The underlying idea is not only that bodily contact with an Untouchable is defiling, but that, under normal conditions, a woman should not be touched by anybody else than her husband.

[5] MA p. 374 § 29. A prototype of such expiation certificates is given in Wajrācārya and Śreṣṭha 2032:96 (appendix).

[6] Donations to Brahmins as, f.i., the *godān* ('the gift of a cow'), have not only an expiative or propitiative character. They can be offered in sumptuous ceremonies (resembling the feasts of merit) with the aim to bestow merit *(punya)* on the donator. Cf. Kane 1953: 51f., Kane 1974: 837ff.

[7] MA p. 674 § 3.

Here instead of *patiyā* the term *prāyaścit*, absolution, is used, even though the victim of the error need not perform any action interpretable in the sense of atonement or purification, such as pilgrimage or *godān*.[8]

Case 5: An offence committed knowingly (contrary to *bhor*). If a man of one of the pure castes knowingly has sexual intercourse with a woman of one of the touchable impure castes without accepting *bhāt* or water from her, he is fined *(daṇḍ)* and has to go on a pilgrimage. On his return, he will obtain *prāyaścit* and be deemed as pure *(śuddha)*.[9] Here both punishment and pilgrimage are an instrument for regaining purity.

Case 6: Mistake. Even the consequences (i.e., degradation) of sexual intercourse between a man of the pure castes and an untouchable woman can be rescinded if the man was not aware of the woman's caste. He obtains *patiyā* and, as the text adds, will not be punished due to the fact that he was mistaken *(bhormā paryāko hunāle daṇḍ hudaina)*.[10]

Case 7: Even an imbecile who verifiably is not aware of what he is doing *(garnyā nagarnyā kurāko ... wicār nabhaeko)*, must give *godān* and obtain *patiyā*, if he has partaken of impure food *(abhakṣ)* or violated the rules regarding the acceptance of *bhāt* and water.[11]

Case 8 represents one of the rare exceptions, in which the consequences of an erroneously committed act cannot be fully nullified. If an innocent person was degraded to the status of an impure caste in consequence of a judicial error and had to partake of *abhakṣ* (e.g., a Brahmin of alcohol), he can only be rehabilitated to the status of a pure caste ("Water-Acceptable"), but not re-admitted to his original caste. He will only obtain "water *patiyā*" *(pāniko patiyā)*.[12]

The MA regards an offence committed erroneously or unwittingly as "excusable" at least in so far as it has no penal consequences and/or does not entail the loss of one's caste status—provided the offender is ready to take certain steps interpretable as purification as well as expiation. This means at the same time that certain actions principally necessitate purification and/or penance, and in any case absolution *(patiyā, prāyaścit)*, even if the persons involved are not regarded as guilty. Responsibility is an additional factor. Guilt increases the gravity of the offence and entails a penalty. To give an example, the MA uses different criteria to distinguish between sexual intercourse having taken place unwittingly or wittingly; by mutual consent of the persons involved or as an act of violence; and it even takes into account whether the intercourse has taken place actually or only "verbally" *(mukh patit)* or whether it has only been attempted *(āsaya karaṇi)*.[13]

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[8] Pilgrimages *(tirtha)* are chiefly a means of acquiring redemption from one's sins, partly by *tapas* (asceticism), partly by purification (bathing in holy waters). Cf. Kane 1953: 55f., 552ff. and Bhardwaj 1973: 148 on pilgrimage in general. On the most important places of pilgrimage in Nepal cf. Jha 1971: 45ff.

[9] MA p. 671 § 1.

[10] MA p. 671f. § 7.

[11] MA p. 380 § 7.

[12] MA p. 385 § 24.

But on the whole, purification and penance can be as little separated from each other as penance and penalty. This is proved by the following examples:

Case 9: If someone has committed an offence punishable by life-imprisonment, branding (degradation) or execution and if he escapes the punishment by absconding, his children will be called *pātaki*, 'sinners', and they may marry only members of the impure castes. Here the only explanation for the discriminating denomination as well as for the degradation to the status of an impure caste is that the children shoulder the responsibility for their father not having served his sentence.[14]

Case 10: The following provision is only applicable to the "Cord-Wearers": If a minor has committed an offence punishable by degradation and if this comes to light only after his death, his children can obtain a posthumous rehabilitation for themselves and for the deceased father or mother. The rehabilitation is identical with the *kṛyā śuddhako patiyā*, the "*patiyā* for the purity of death rites" (cf. above p. 162). The text makes it clear that by this act the descendants' caste status is fully restored. Thenceforth they are permitted to perform their caste-specific life-cycle rites (investiture with the holy cord, marriage, etc) which continuously confirm their purity. It is in this way that I would interpret the sentence: "[...] *āmā wāwuko kṛyā śuddhako patiyā bhayā pachi patiyā garnu pardaina jāt wiseṣko [wiśeṣko] wratawaṁdh wiwāh ādi karmale* [here: *karma* = rite] *śuddha huṁchan estāko jāt jādaina bhāt calcha*".[15]

Case 11: Even an act which was necessitated by emergency is recognised as guilt if the person in question fails to report it to the authorities. Thus, if someone—except an Upādhyaya Brahmin—has fallen ill away from home or whilst abroad and has been compelled to accept water or *bhāt* from a lower-ranking person, he can be given absolution, provided he reports the case. If he fails to do so he will be supposed to have acted on his own will and thus incur penalty. In case he died after the denouncement but before having obtained absolution, his agnates *(bhāi chorā)* can be given *patiyā*.[16]

From the cases discussed above the following may be concluded:

Loss of purity can be brought about with or without the guilt of the person in question; the loss of purity increases by guilt. This not only holds good for cases in which the offender's degradation is explicitly mentioned, but also for penalties such as life-imprisonment and capital punishment. Otherwise the children born after the offence has taken place would not be degraded, and no posthumous rehabilitation would be necessary.

Posthumous rehabilitation (case 10) and "liability of clan and kin" (case 9) display the element of penance implied in the penalty, as purity and caste status can only be restored if the sentence is served. If the offender is only to be fined he often (but by no means always) attains *patiyā* after having paid the prescribed amount. By contrast, penalties implying degradation are deemed to be expiated after the offender's death or after he has given proof of his readiness to die (*dehānta prāyaścit*, see p. 161f.), for only then can a *patiyā* be proposed for him.

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[13] Cf. above p. 42ff.

[14] MA p. 386 § 27. Probably only those children are meant who were born after the criminal act.

[15] MA p. 394 § 54.

[16] MA p. 387f. § 29.

In some cases *patiyā* requires an additional action interpretable as penance which is performed after having served the sentence, i.e., the penalty proper. In case 5, for example, a pilgrimage is necessary in addition to the fine.

Lastly, the "avowal" (*jāher*, 'report') is an essential condition either for obtaining purification and absolution or for being spared penal sanctions (cf. below pp. 179, 181).

The interdependence between purity, penance and penalty still requires a systematic and comparative analysis. However, the few examples we have adduced above prove that the homo hierarchicus—as Dumont calls the individual in a caste society—is not only a passive bearer of an ascribed status. The individual is not a mere "result" of role summation as determined by the various overlapping status dimensions to which he belongs. Rather, the individual is individualised as an autonomous being, acting responsibly as well as with the chance of correcting the karmic destination by expiating. Karma is not fatum, and pollution, in spite of a certain degree of "autodynamism", accrues from guilt.[17] The transferability of impurity to others, especially the transferability of a decline in status to one's offspring, necessitates a high degree of responsibility of the individual, on the one hand, and of the State, on the other, which has to control the relations between the individuals. Thus guilt and responsibility are an essential component in the ideology of purity of the MA; they serve as an instrument of social integration. The close intertwinement of the purity conception and the penal law has already been demonstrated in the chapters dealing with inter-caste relations. On the one hand, the transference of impurity to fellow-caste members through *bhāt* and water acceptance or through sexual intercourse is an asocial act and therefore liable to punishment because such behaviour jeopardises the status of other persons. On the other hand, a murderer, even though he has not violated commensality or consexuality rules, is also considered defiled and himself defiling for anyone coming into contact with him (cf. p. 16). That is to say, pollution through *bhāt*, water and sexual intercourse is asocial, and an asocial action such as murder is polluting.[18]

Here again it is proved to what extent legal texts may be useful for social analysis.

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[17] Kolenda (1964) shows that Indian low castes often rationalise their position in the hierarchy as a consequence, not of the individual member's karma, but of an "accident" in the history of the whole caste by pretending, f.i., to be the descendants of degraded Brahmins. Thus, "the injustice of their position is tied in, then, with the injustice of pollution", as Kolenda (1964: 75) puts it.

[18] On the polluting character of murder cf. MA p. 381 § 13.—For the accidental killing (*bhawitawyanā jyān mārnyā*) of somebody, the killer is held to contribute to the funeral expenses of his victim and to go on a pilgrimage, upon which he is to obtain *prāyaścit* (MA p. 292 § 2).

Excursus: penance and penalty in the classical sources

With regard to both conception and terminology, the classical sources of Hindu law are characterised by a confusing diversity. However, there are some basic principles to be distinguished, which obviously influenced the MA.

a) Sin is polluting, and b) the first step towards its remission is the confession of it.[19] c) Sin is redeemable by penance/penalty/purification, and penalty can also have expiative effects, just as does penance. d) The gravity of the sin/offence and the severity of penance/penalty are last but not least functions of the *varṇa* affiliation of the sinner and his victim, respectively.[20]

A fundamental question for the commentators is, as Kane emphasises,[21] whether penance can abrogate the *karma*. They disagree on whether only unknowingly committed sins can be remitted by an expiative act or whether sins committed knowingly can also be remitted. Manu prescribes expiation, *prāyaścitta*, only for knowingly committed sins in order to avoid the torments of hell and the negative consequences for rebirth. Sins committed unintentionally, by contrast, can be remitted by a simple recitation of the Vedas.

The action designated as *prāyaścitta* primarily means penance or expiation; as Kane points out, in the older literature, the term also stood for 'warding off an inauspicious event'.[22] In the *smṛti*, *prāyaścitta* has a multiple objective: redemption of the karmic consequences of a sin, the sinner's spiritual satisfaction (purging of the soul) and therefore his re-admittance into the community. According to the Mitākṣarā, *prāyaścitta* can only be effective in the case of sins which do not entail damnation in hell or the loss of one's *varṇa* status. According to other sources (Agnipurāṇa, Aṅgiras, Vyāsa), penance can remit sins which have been committed knowingly *(kāmataḥ)*; for such sins the penance is double that prescribed for sins committed unknowingly *(akāmataḥ, ajñāna)*. Aṅgiras distinguishes four steps in the procedure of penance: a) approaching the assembly of learned men (to confess and to be tried); b) declaration of penance by the assembly; c) performance of the penance; and d) announcing that the sinner has been freed from his taint.[23] Finally, the authors also consider emergency cases in times of distress *(āpadi)* which do not entail defilement and sin.[24]

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[19] Kane generally renders *prāyaścitta* by 'expiation', 'penance', and *daṇḍa* by 'punishment', 'penalty'. The term *sāhasa* means 'offence' but also 'fine'; *pāpa*, *pataniya*, *pātaka* and *patana* stand for 'sin' or 'sinfulness'. It is significant that the last three words derive from the verb *pat-*, 'to fall', as does the term *patita*, 'degraded' (Kane 1953: 8-86).

[20] The Āpasthamba Dharmasūtra, for instance, distinguishes two categories of sins, namely a) *pataniya*, such as drinking alcohol, or incest, entailing the loss of *varṇa* status, and b) *aśucikara*, i.e., sins which pollute, such as sexual intercourse with a *śūdra* woman. In other works, *pataniya* and *aśucikara* are either treated as identical or there are still more categories of sin (Kane 1953: 8-86).

[21] Kane 1953: 38ff., 1589.

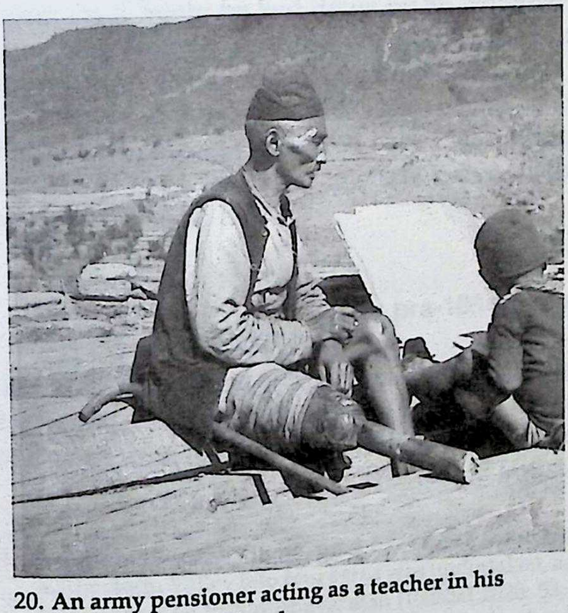
[22] Kane 1953: 57f.

[23] Kane 1953: 84f.

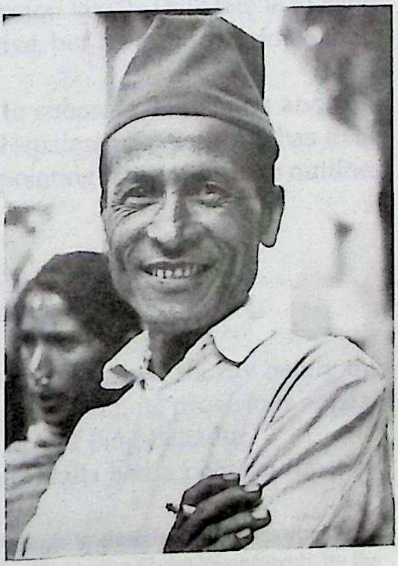
[24] Manu Saṁhitā 1909: 378-388.

18. A Tāmāṅg man churning butter in his temporary cattle-shed, Central Nepal.

19. Kāmi girls, Central Nepal.



20. An army pensioner acting as a teacher in his village, Central Nepal.



21. A Newār man, Bhaktapur.

Not every sin is an offence within the meaning of criminal law, but for every offence a *prāyaścitta* has to be performed besides the punishment executed by the king. In many a case, the penalty can be replaced by a penance which is more severe than the punishment itself, e.g., suicide. In other instances, penance and penalty are identical. As Kane concludes, one cannot always clearly ascertain whether penance and penalty are effective cumulatively or merely alternatively.[25] In Gampert's view, the intertwinement of penance, penalty and purification, which is today often effective simultaneously, results from a superimposition of various mutually exclusive conceptions, stemming from different periods of Indian history. In the Vedic time, sin was conceived as a noxious substance which could, so to speak, be prayed or sacrificed away. An ethical substance was not given to the *prāyaścitta* until the emergence of the karma concept. However, the original magic features implied in expiative actions, such as bathing, pilgrimage and sacrifice, were not completely replaced. The result was the idea that good actions could neutralise evil deeds and that the precondition of good intentions was repentance. With the emergence of the state, the sovereign's criminal law threatened to suppress the autonomy of penance, the supervision of which had been the privilege of the Brahmins. The latter ultimately recognised the death penalty as an expiation, as *prāyaścitta*.[26]

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[25] Kane 1953: 69.

[26] Gampert 1939: 254ff.

XVII

THE PUBLIC AUTHORITY AND THE CASTE HIERARCHY

> "Out of terror all creatures run about when the world suffers anarchy; hence, the lord created the king for the protection of all [...]. Daily he shall abide by the instructions of pure, old Veda knowing Brahmanas [...]." (Manu Saṁhitā 1909: 222, 224)

According to the MA, the State not only imposes punishment, it also prescribes purification and expiation and controls their performance. Expiation is not merely a matter of individual conscience, nor is it the fulfilment of a purely religious norm (as it might be laid down by an "internal canon law"). The State is to sanction the caste inter-relations not only qua legislative, but it also is to enforce them qua executive and judicial power.

The question whether this claim of the State to subordinate religion and customs to the law, can be traced back to a specific Nepalese tradition, still has to be analysed.[1] Here we must content ourselves with pointing out some of the outlines of Nepalese legal history.

The pre-1854 legislation

The code of the Newār king Jayasthiti Malla was promulgated shortly before the turn of the 14th to the 15th century. As to the caste system, its provisions appear still more detailed and explicit than those of the MA of Jaṅg Bahādur.

Just like the MA, the laws enacted by Jayasthiti Malla had a political function and were meant to homogenise legislation after the unification of the three kingdoms of Kāṭhmāṇḍu, Pāṭan and Bhaktapur. According to the Bhāṣā Waṁśāwali, Jayasthiti Malla's Law was based on the precepts of the Manusmṛti and promulgated at his subjects' request.[2] We also know that the king was advised by Indian Brahmins.[3]

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[1] Cf. our introductory notes, pp. 1-5.—One of the first attempts to classify the population of the Kāṭhmāṇḍu Valley into four *varṇa* was undertaken, according to the Bhāṣā Waṁśāwali, by the legendary king Paśupuṣpavarman (Pauḍel 2020: 53; cf. also Lévi 1905, II: 83f.). From an inscription Wajrācārya (2030: 290f., 299) concludes the existence, under the reign of the Licchawi kings (around AD 200-750), of an office controlling caste-related affairs. The inscription exempts a village from the authority of that office and bestows upon it the privilege to address any case of *dharmasaṁkara*, "mixing of dharma", directly to the king.

Apart from the obligatory usage of the *varṇa* terminology, many of the individual castes of that time are mentioned by name; furthermore, a distinction is made between Hindu and Buddhist castes.[4] It is laid down in detail which castes are to carry out which works for which castes, with special regard to manual work (from nail cutting to the painting of pictures) and to priestly functions. (In the MA, such provisions are absent.) Caste-specific codes of conduct are described consistently and in detail. Thus it is prescribed for each caste how many days their members have to mourn; the number of days varies but is not correlatable with the relative status position of the castes within the hierarchy. A number of provisions refer to the types of life-cycle rites, to the permitted forms of marriage, to the intermarriage between different castes and, as a matter of fact, to the types of dresses and housing, which differ according to caste.

Here we may quote as an example the provisions applying to the untouchable Poṛe (cf. above pp. 71, 75). The Poṛe should a) live on fishing; b) wear the dresses left by deceased members of the higher castes (*murdākā posāk*, lit. 'dress from the corpse') in such a way that trousers and shirt must always be of different colours and patterns (obviously in order to identify them as remnants or cast-offs); c) the Poṛe should partake of pork but not of beef; d) they should not wear gold jewellery; and e) they can enter the city only during the daytime (i.e., they have to live outside the settlement proper);[5] f) they must not touch any higher-ranking person.

When the king dies, the entire caste hierarchy undergoes a kind of dramatised representation as a "national hierarchy": all the "four *warṇa* and 36 *jāt*" take part in the funeral procession, marching in files according to their caste ranks (*jāt anusār kramaiśit*).[6]

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[2] Laṁsāl 2023: 50.

[3] Cf., i.a., Lévi 1905, I: 230. On Jayasthiti Malla and the Newār caste system in general cf. Wright 1877: 181-187; Petech 1958: 179-189; Lévi 1905, I: 193-200, 228-249; Pant n.d.b.; and Surya Bahādur Thāpā in his introduction to the reprint edition of the MA (p. 2).

[4] The following details are drawn from the Bhāṣā Waṁśāwali in Laṁsāl's edition (Laṁsāl 2023: 37-53). As this source dates from the first half of the 19th century, it is difficult to decide to what extent the description it gives of the society of Jayasthiti Malla's time corresponds to reality. Be that as it may, some details in the edition used here are not clear. The *waṁśāwali* employs the term *jāt* in a threefold sense: it calls the four *warṇa* also *jāt* and speaks, then, of altogether 36 *jāt* among the king's subjects, most of which consist, in their turn, of a varying number of subdivisions also termed *jāt*. The latter total 725. A consistent exemplification is given nowhere in the text.

[5] The fact that impure castes were not allowed to dwell within the precincts of the old towns of the Kāṭhmāṇḍu Valley is also evident from the studies by Gutschow and Kölver (Gutschow 1977: 13; Gutschow and Kölver 1976: 48ff.).

[6] Laṁsāl 2023: 37-53.

More than 450 years passed before Jaṅg Bahādur presented a code of similar consistency. During the interval, legislation had a more sporadic character.

In 1675, for example, the Newār kings of Kāṭhmāṇḍu, Pāṭan and Bhaktapur are said to have homogenised the rules of mourning and death rites. In 1698, Yoga Narendra Malla of Pāṭan laid down that for all castes the mourning period should last 45 days, with the exception of those persons who had to carry on the government; the latter had to observe twelve days only.[7]

During the first half of the 16th century, King Rām Śāh of Gorkhā also made an attempt at codification by promulgating his so-called twenty-six laws *(sthiti)*. Apart from his reforms in the field of administration, of weights and measures, etc, some of the *sthiti* were committed to a stabilisation of the caste hierarchy within the kingdom. Thus, certain privileges of those Brahmins who served at Court as cooks, civil servants or priests were confirmed. Members of ethnic groups, such as the Magar, were integrated into the administration and were given adequate ranks and titles. With reference to the *śāstra*, Rām Śāh also laid down that—contrary to the Khas, Magar and Newār—the Brahmins, those Ṭhakuri who belonged to the royal clans, as well as the ascetics were to be exempted from the death penalty. They were "unkillable", *awadhya*.[8]

After the conquest accomplished by Prithwi Nārāyaṇ Śāh in the second half of the 18th century, the necessity of a new legislation arose. Prithwi Nārāyaṇ took pride in having studied the laws of Jayasthiti Malla, Mahendra Malla and Rām Śāh,[9] and he obviously did this with the intention of producing a code appropriately considering the historical traditions of his subjects in Nepal's markedly enlarged territory. Due to his untimely death and the subsequent period of political instability, another eighty years were to pass until this project materialised and Jaṅg Bahādur was able to promulgate his Muluki Ain.[10] It may be added that the Muluki Ain mentions Prithwi Nārāyaṇ by name and confirms *(thāminu)* some of his edicts of BS 1825.[11]

Legislation and the administration of justice in the Muluki Ain

The preamble to the original edition of the MA is of particular interest, as here the objective of the code is exposed: It is meant to establish a homogeneous application of the law for the whole country *(bharmuluk)*. The practice of law which had hitherto varied from region to region should discontinue and "henceforth, lower and higher-ranking subjects shall be punished uniformly according to their guilt and caste (!)": "[...] *choṭā waḍā prajā prāṇi sabailāi khat jāt māphik ekai sajāya hawas*".[12]

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[7] Burleigh 1976: 40, 47.

[8] As reprinted in the appendix to the MA, p. 697-699. Recently, Riccardi (1977) has published a translation of these *sthiti* with some valuable comments.

[9] Diwya Upadeś 2024: 24.

[10] Cf. also S.B. Thāpā in his introduction to the reprint edition of the MA and Ācārya 2022: 127-151 on the era of the kings Prithwi Nārāyaṇ, Pratāpsiṅgh and Raṇa Bahādur. Ācārya (2022: 133f.) mentions a code of Pratāpsiṅgh which, to my knowledge, has not yet been discovered. Cf. also Pant (n.d.a) on possible parallels between the political thought of Prithwi Nārāyaṇ and the Arthaśāstra.

[11] MA p. 162 § 16-17.

The preamble further states that therefore the Prime Minister Jaṅg Bahādur ordered a Court Council *(bhārādāri kausal)* consisting of noblemen and experts to draft a new code. This council examined everything, corrected whatever was to be corrected, abolished whatever was to be abolished and replaced it by new laws.[13] Henceforth, this code shall apply to everybody. Amendments may only be suggested by the prime minister and the council. All other persons authorised to administer justice incur a penalty if they add something to the code or cancel anything. The preamble closes with the announcement that the legislator reserves for himself the right to amendments for the benefit and the safeguard of his subjects *(prajā prāṇilāi subistā rakṣā)*. It is notified that such amendments are to be sent annually to the authorities concerned.

As we have seen, the Rāṇā prime minister, who represents the king, is the supreme legislative authority. (Formally speaking, the king delegates parts of his authority to the prime minister.) The Court Council and consequently the Brahmins, as consecrated representatives of religious authority, are conceded a mere advisory function. This is valid at least de facto.

As has been shown by Kumar, the prime minister received petitions during his usual audiences *(darbār)* and not infrequently did he suspend the decisions of the courts. Thus, he represented the supreme judicial instance, but this also meant that he could disregard the law in force. He was a "law unto himself".[14] It does not clearly emerge from the MA how far jurisdiction regarding caste affairs was affected by this fact. We only know that in some cases the prime minister (or the king, *sarkār*) could rehabilitate somebody even if this was not in accordance with the law then in force.[15]

Jurisdiction in matters regarding caste seems to be incumbent on the *dharmādhikāri*.[16] According to Kumar and others, the *dharmādhikāri* was the head of the "state priests" *(rājguru)*, who, as expounders of the *dharmaśāstra*, held a seat in the legislative and judicial body, the *bhārādāri kausal*.[17] The MA itself fails to define the office of the *dharmādhikāri*. In one instance, it mentions a *śrī guru dharmādhikārī* who seems to be identical with the above-mentioned *rājguru*.[18] Other passages clearly suggest that some of the *dharmādhikāri*'s duties can be delegated to local officials and even notables.[19]

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[12] MA p. 1-2.

[13] "[...] *kausalkā tajwījmā sacyāunā khārej garnyā ṭhaharyākā sacyāi khārej garī naññā* [*nayā*] *bhayākā ain thapi* [...]."

[14] Kumar 1967: 85.

[15] Cf. below. On the other hand stands that even the sanction the prime minister accords to a court sentence can become invalid if the court establishes its unlawfulness *(anyāya)* (MA p. 162 § 20). According to the MA (p. 171f. § 11), the courts of justice are autonomous with regard to their decisions. They have to consult *(sādhnu)* the Court Council only a) if this is imposed by the law (i.e., in order to make sanctioned decisions in cases of degradation and capital punishment, cf. below); and b) if the law is found to be at variance with common practice *(ainmā wihorā namilnyā kurā pariāyā bhanyā)*.

[16] *dharmādhikāri* < *dharma*, 'law', 'religion', + *adhikār*, 'power', 'competence'.

[17] Kumar 1967: 92, 117, 128; Lévi 1905, I: 239, 247f.; Hodgson 1880, II: 214ff.

Thus, in connection with the adjudication of a pollution by impure castes, the MA mentions the following officials and agents:[20]

> *hākim, ḍiṭṭhā bicāri, amāli, dwāre, ṭhekdār, ijārādār, thari, mukhiyā, jimmāwāl, mijhāre, gauruṅ, jyeṭhā, buḍhā, caudhari, mukdam, thāni thari, bhalā mānisharu.*

That they all may act as *dharmādhikāri* (or his representatives) emerges from another paragraph:[21]

> *"... patiyā garāī dinyā adālat ṭhānākā hākim aḍ(ḍ)ā gauḍākā bhārādār ḍiṭṭhā wicāri amāli dwāryā mukhiyā jimmāwāl patiyā dinyā dharmādhikār jo ho ..."*

All these persons are entitled to give *patiyā* in certain cases and are called *dharmādhikār(i)*. In the list, only the *hākim*, the *bicāri* and the *ḍiṭṭhā* are judicial officials of the provincial or central government. The *mukhiyā* and the *amāli* can be both revenue officers as well as village headmen.[22] The *jimmāwāl, ṭhekdār, mijhāre, gauruṅ*, etc, are other local agents of the State or of a landlord, who collect taxes and exercise certain control functions. Finally, the persons designated as *j(y)eṭhā buḍhā bhalā mānisharu*, i.e., 'the old and honest men', do not necessarily hold an office; rather they are members of ad-hoc village councils.

Assignees of rent and other revenue, such as the *birtā*-holders, the heads of monasteries *(maṭh)*, temples, pilgrim hostels and welfare institutions *(guṭhi)*, etc, are also invested with certain judicial functions over their tenants.[23]

As far as caste matters are concerned, all these officials, landlords and local agents are entitled to carry out investigations *(kāyal)*, to draw up minutes and certificates *(kāyalnāmā, purji, muculkā)* and to exclude the accused or suspected person from intercourse with his fellow caste members during the pendency of his lawsuit.[24]

Their powers are limited in so far as they may impart *patiyā* only if the offence dealt with was committed unknowingly *(bhor)*.[25] For an offence committed intentionally or knowingly and for which the law does not enact a rehabilitation (*ainmā patiyā nadinu bhanyākālāi*), a *patiyā* can only be given by the king (*sarkār*) or by the prime minister (*mukhtiyār*). This legal act must be laid down in a royal decree (*lālmohor*).[26] An exception is posthumous rehabilitation, which may be imparted by the *dharmādhikāri* (i.e., all agents acting as, or on behalf of the, *dharmādhikāri*?) even for an offence committed with intent.[27]

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[18] MA p. 159 § 8.

[19] MA 393 § 51, cf. also below.

[20] MA 397 § 60.

[21] MA p. 393 § 51.

[22] or headmen of other local administrative units. On the *mukhiyā*, etc, among the Guruṅg and Limbu cf. Messerschmidt 1976: 17 and Regmi 1963: 126f.

[23] "[...] *māphī jaggākā guṭhiyār wirtāwār* [*birtāwāl*] *maṭhdhārī saṁtamahaṁt* [...]", MA p. 2 (preamble). On the police and judiciary powers of the *birtā*-holders cf. also Regmi 1976: 33ff.

[24] This is called *haṭak*, cf. above p. 158.

[25] The later edition of the MA (2009, V: 151 § 37) appears to be more precise. It lays down that local dignitaries, such as the *tālukdār* (headman) and the notables *(bhalādmi)* may impart *patiyā*

Degradation and capital punishment can be dealt with by the central authorities only. The MA determines that, in cases involving defilement (*bor*) through *bhāt*, water and sexual intercourse between pure and impure castes as well as in cases called *pañc khat*, that is, cases penalised by capital punishment, *dāmal*, degradation by shaving the head (cf. pp. 159ff.), the local courts and agents shall send the offender along with his written confession (*kāyalnāmā, jamānbandi*) to the courts of law (*adālat*) in Kāṭhmāṇḍu.[28] The decision of these courts is again to be sanctioned by a *lālmohor*, a decree bearing the signatures (seals) of the king, the prime minister and the members of the State Council.[29]

All these regulations prove that the State's functions are not restricted to legislation alone. Whatever relates to caste is subject to the control of the executive and judicial powers. The State controls in particular all mobility processes taking place within the hierarchy: degradation as well as rehabilitation.

The State casts an eye on many events in the individual's daily life which, according to Western thought, affect his private sphere. Every violation of the rules regarding commensality and consexuality must be reported (*jāher*), regardless of whether it can be considered guilt or not. This holds good even if a child under 12 does not wash itself after defecation, thus polluting his commensals.[30] A spouse, too, is obliged to inform against her husband if he infringes the commensality rules (however, she goes unpunished if she fails to denounce a theft committed by her husband).[31] The threat of a penalty for a husband who refuses to accept *bhāt* from his wife of an adequate status is another example showing to what extent the State controls the individual (see p. 41). On the whole, the negligence of any caste-specific custom is liable to punishment if the MA has approved of it as such. It is true that certain decisions are left to the relatives and fellow caste members as, for instance, the question of whether somebody who has violated the rules of commensality is to be excluded from commensality or not (cf.

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only in the case of minor offences, such as pollution through the hookah and fettering the legs of cows and oxen (regarded as cruelty).

[26] MA p. 379ff. § 2-4, 7, 29, p. 416 § 6.

[27] Cf. above p. 161f. and MA p. 379ff. § 8-10.

[28] MA p. 182 § 6.

[29] MA p. 159 § 7, p. 181f. § 1-3,4, p. 193ff., p. 212 § 4. On the legal procedure in detail cf. Gorkhā adāḷati śikṣā 1896: 30, 34. On the jurisdiction in the time prior to the MA cf. Kirkpatrick 1969: 196-204 and Hodgson 1880, II. On the relationship between central and regional authorities in the Rāṇā time cf. also Edwards 1976.

[30] MA p. 416 § 6.

[31] MA p. 193 § 3.

pp. 25f., 43f.). Nevertheless, such cases are seldom and, moreover, the relatives decide only on what we have called the "social consequences" and they decide only after the State authority has intervened and punished the offender.[32]

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[32] Cf. above pp. 25, 35f. and MA p. 408 § 4 as an example.

XVIII

THE MULUKI AIN AND THE ROLE OF THE STATE IN THE LEGAL TRADITION OF INDIA

> "An ancient king did not direct the public affairs of a state or nations in any modern sense of the term; he did not rule by (...) promulgating never-ending streams of laws and rules (...). He was to administer justice (...) by upholding the traditions, by arbitrating disputes, by punishing and counteracting infringements of the established rules and customs (...)." (Gonda 1966: 68f.)

The traditional Indian legal concept does not recognise the king as legislator and still less as a reformer of public morality. It is true, he passed sporadically decrees (*śāsana*, *tāmrāpatra*, etc) which established binding legal principles and which sometimes even opposed the *dharma*. Lingat, however, interprets these decrees as an expression of royal will and a positive law meant for immediate application.[1] The king's (or the state's) duty was limited to the publication of the law and to the control *(rakṣaṇa)* of its application. He had to enforce the *dharma*. In order to save his subjects from the consequences of a sin, he must protect the victim from the offender and indemnify him. But he also must compel the offender to expiate for the sake of his, the offender's, spiritual welfare.[2]

The king represents the wordly power, *kṣatra*, and he is, therefore, subject to the spiritual power, the *brahman*.[3] Hence, legislation is incumbent on the Brahmins. To be more precise, the Brahmins are the only ones authorised to interpret the *dharma* and to prescribe the penance, for the performance of which the king is responsible.[4] This ideal of the "separation of powers" is characteristic of the whole *smṛti* literature, and the justification of the penalty, as an expiation enforced by the king, is particularly emphasised by Manu.[5]

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[1] Lingat 1973: 226-232. Similarly Derrett (n.d.).

[2] Lingat 1973: 223, 232. Cf. also Kangle 1965: 119, 223 on the Arthaśāstra.

[3] Lingat 1973: 215ff. and Dumont 1966: 351ff.—In contemporary India, the highest religious authority is claimed by the four (or five) *jagadguru*, "teachers of the world". One of them resides at Sringeri in South India and is called the "Hindu Pope". The known history of his "see" goes back as far as the Vijayanagara empire. Cf. Lütt 1975.

[4] Lingat 1973: 66; Kane 1974: 966-975; Kane 1953: 68-86.

[5] Cf. Dumont 1966: 346f.

In Maynard's view, the caste system is based on three premises, namely the "jurisdiction of the caste assembly", the "expository and declaratory functions of the Brahmins", and the "enforcing authority of the king". According to him, the internal autonomy of caste results from the fact that its historical emergence as a social group was not due to the sovereign's will. He, the sovereign, only guaranteed its continuity. As the king also acted as an employer in public administration, the domains of the crown and in state monopolies, he had an interest in keeping alive the segregation of the castes because of the division of labour resulting thereof.[6]

Hodgson, too, focuses on public interest. In his view, it is the raison d'être of the law to prevent the caste hierarchy from collapsing. He writes:[7]

> "Of all these acts, the most severely regarded is intercourse between the sexes of such parties; because of its leading directly to the confusion of all castes (...); for the Hindu agent or subject will, of course, proceed, till detected, to communicate as usual with his or her relations, who again will communicate with theirs, until the foul contamination has reached the ends of the city and kingdom, and imposed upon all (besides the sin) the necessity of submitting themselves to a variety of tedious and expensive purificatory processes, pending the fulfilment of which all their pursuits of business or pleasure are necessarily suspended, and themselves rendered, for the time, outcastes (...). Hence the innumerable ceremonial observances, penetrating into every act of life, which have been erected to perpetuate this law; and hence the dreadful inflictions with which the breach of it is visited."

According to the Indian legal tradition, the king had to respect not only the *dharma* and the Brahmins, but also the autonomy of customary law which implied the autonomy of internal jurisdiction of local groups, castes, villages and guilds. In general, the state exercised its judicial power only in criminal cases *(prakīrṇaka)* in so far as politics or the four *varṇa* were involved. Only at the request of the parties concerned did the state intervene in civil cases *(vādi-kṛta)* as well as in the field of customary law. According to the Āpasthamba Dharmaśāstra, it is the learned men, the *ācārya* (of the delinquent's caste or locality), who ordain the measures necessary for the atonement of a sin. If the sinner is unwilling to obey, the *ācārya* should bring the case before the king who, after due deliberation with his *purohita*, will enforce the expiation.[8]

Gune's study produces the impression that, even in the late pre-British period, the principles of the *smṛti* were in force. According to Gune, between AD 1650 and 1818 there were altogether three instances in Maharashtra, which administered law in matters related to caste and religion, namely the caste assembly *(jātisabhā)*, the council of learned Brahmins *(brahmāsabhā)* presided over by the *dharmādhikārī*, and finally the king and his officials. The caste assembly used to investigate into the case and to exclude the offender from his caste until he had undergone expiation as prescribed by the Brahmins. The mediation between the two instances, the caste assembly and the Brahmins, was reserved to the state. In any case, the state supervised the performance of expiation: it levied a fine *(brahmādaṇḍa)* on the offender, gave a written account of the factual findings *(doṣāpatra)* and submitted it to the Brahmins. The latter, in their turn, certified in a document, called *śuddhipatra*, that the delinquent surrendered to them had performed the purification or expiation prescribed. In criminal cases, the state had the additional duty of imprisoning the delinquent or of imposing a fine, called *rājdaṇḍa*, on him.[9] Consequently, the state has hardly any judicial function proper. It represents merely the executive power enforcing the resolutions of the caste assembly and/or the Brahmins and helps the offender to expiate and re-attain his caste status.

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[6] Maynard 1917: 91f., 94, 98ff.

[7] Hodgson 1880, II: 239.

[8] Cf. Lingat 1973: 226f., 237-256; Derrett 1973: 12ff. On the Āpasthamba Dharmaśāstra cf. Kane 1953: 70.

Although caution is required in view of India's great historical and regional diversity, the data discussed above show that the MA is a positively autonomous continuation of the Indian legal tradition, autonomous in the sense that it is adapted to contemporary conditions. It assigns to legislation as well as to executive and justice a direct control over the social sphere. It is also the State which controls legislation, even though it is not fully established whether it represents de jure the supreme authority.[10] At least we can state that in the preamble to the MA, no mention is made of the legislation being exclusively devolved upon the Brahmin members of the legislative body. However important their role as expounders of the *dharma* may be, the law is drafted by the entire *bhārādāri kausal* and promulgated by the prime minister. One may perhaps go as far as to regard the MA as a systematic collection of *śāsana*, royal edicts in the classical sense of the term (cf. above p. 146). This would make the State the highest legislative authority de jure, too.

Derrett writes that Indian history hardly offers any clues to the fact that the king promulgated laws for his peoples as a whole. He states that in pre-British India the village community, with its interdependent castes, classes, families and sects, preserved its own standards as far as jurisdiction was concerned.[11] For the MA, the very reverse is true.

The MA is a common law applicable within a state territory. One of its conspicuous features is the attention it devotes to the castes. To my knowledge, the Indian legal works do not deal with caste hierarchies of certain periods or regions, sanctioning them in detail. They deal still less with a "national hierarchy" as the MA does. The Arthaśāstra which, as to its claims, is particularly related to the MA, mentions individual castes by name only in connection with the progeny of mixed marriages; however, it fails to allocate them a precisely defined position within the hierarchy. Inscriptions and edicts of Indian kings seem to confirm only the privileges or duties of individual castes without minutely prescribing their interrelations with other castes. As Srinivas points out, in traditional India there was no "clear-cut hierarchy with the position of each caste defined precisely", and the king came in only as "the ultimate authority for settling disputes with regard to the rank of a caste".[12]

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[9] Gune 1953: 110ff. In spite of its obvious deficiencies, Gune is an important source.

[10] It goes without saying that the term "separation of powers" is used here in the figurative sense. It is also obvious that "State" can be spoken of only with some reservations. We use the word because we are aware of the fact that, at the time of the MA, Nepal was no longer a "patrimonial kingdom" (M. Weber) but a "centralised agrarian bureaucracy" (M.C. Regmi), acquainted to some extent with such Western notions as "citizen" and "state territory".

[11] Derrett n.d.: 12f.

The autonomy of customary law and religion is considerably restricted by the MA. Customary law and the precepts of religion are only applicable if they have become *ain*, law. Jurisdiction is chiefly a privilege of the State. That the MA assigns local jurisdiction and police powers also to persons who are not office-holders in the state bureaucracy itself cannot be taken as an indication of caste or village autonomy in judicial matters. (In practice, this fact may merely enhance a flexible interpretation of the law in petty cases.) Legally, neither caste membership nor domicile but a person's tenureship determines to whose *local* jurisdiction he is subject. Thus, over peasants cultivating state land (*raikaṛ*, *jhārā*, *rakam* tenures) local judicial authority is with agents of the State, such as the village headmen, tax-collectors and/or functionaries responsible for organising public labour service (*jhārā*, *hulāk*, etc). Tenants under the *birtā*, *jāgir* and *guṭhi* tenures are, by contrast, subject to the "seigniory" of their landlord to whom the State granted land or assigned the income from the land.[13] Somewhat different is the case with the Limbu because their communal ownership rights to land (*kipaṭ* tenure) exist by dint of their membership in their ethnic group. This implies that both tax-collecting and judiciary functions are discharged by their fellow-Limbu, i.e., the headmen of local kin group segments and other agents (*subbā* and *amāli*, respectively). Of course, even these are debarred from dispensing justice in cases punishable with degradation and death penalty.[14]

In sum, whoever administers law in caste affairs, is an agent of the sovereignty, whether he is an official in the bureaucracy (police, courts) or a local functionary or a landlord, and regardless of his actual caste affiliation. Contrary to the ideal of the *smṛti*, the State in Nepal is neither a mere supreme appeal instance for disputes coming within the meaning of customary law nor a mere executive agent of religion, enforcing expiation.

This "étatisation" of society, custom and religion may be regarded as a consistent extension of the ancient Indian concept, according to which the state (the king) is obliged to safeguard the welfare of his subjects. It may also hang together with the legal tradition in Nepal, which held that "the state was the owner of all lands situated within its domain [and that] it alone possessed the right of alienation through sale, mortgage or bequest".[15] However, it is a positive fact that the étatistic tendency was last but not least the result of a deliberate policy of national independence and cultural demarcation (see p. 194). The influence the idea of the modern national state most probably exerted on the MA is to be seen in its introduction of the concepts of sovereignty and citizenship (however rudimentary they may remain from the western point of view). In the final analysis, the MA's society is on the way to becoming a nation of castes.

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[12] Srinivas 1968: 198.

[13] On the different forms of tenure cf. above p. 96f.—One of the possible exceptional instances of legally recognised caste autonomy is that, to my knowledge, among some Untouchables petty cases of pollution, etc, were adjudicated by a *mijhār* from their own castes.

[14] On the Limbu cf. Regmi 1965: 118 and Sagant 1976 a: 158ff., 167ff.

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[15] Regmi 1976: 16.

XIX

THE CASTES IN THE POST-1951 LEGISLATION[1]

> "Le n'importe quoi érigé en système ..."
> "Il n'y a de mortel, de temporel, de limité et d'exclusif que dans l'organisation et dans les structures." (Mural scribbles in the University of Paris, May 1968) (Tchou 1968: 75, 125)

Although the 1955 edition of the Muluki Ain (BS 2012, here quoted as MA 2009) still recognised the caste hierarchy, the country's first Constitution of 1959 proclaimed all citizens to be equal before the law. This was also reflected in the subsequent legislation.

For example, in the new Muluki Ain dating from 1963 (MA 2022), the amount of the divorce payment *(jāri kharc)* is standardised. It is independent of caste affiliation and varies only with the number of marriages the woman concerned had contracted before the actual one to be dissolved.[2] Likewise, kind and measure of the punishment are solely determined by the offender's guilt, and no longer by his caste. Degradation as a penal sanction is abolished. There are no regulations dealing with caste interrelations. Neither the acceptance of *bhāt* or water nor untouchability are mentioned. In the chapter dealing with marriage, no mention is made of prohibited sexual relations between members of certain castes.[3]

However, it is recognised that the various groups within the fold of Nepalese society have different and diverging customs. As far as I can see the term *jāt* is used only once in this context. Otherwise the new MA speaks of *kul*, 'kin group', in the broader sense.[4] For 'custom', the expressions *sāmājik ritisthiti*, *calan* or *dharma* are employed. In official translations, *sāmājik ritisthiti* is often rendered by 'social customs', *calan* by 'custom' and *dharma* by 'religion'.[5] Conspicuously enough, newspapers and official publications also avoid the use of the terms "*jāt*" and "caste" and mostly circumscribe them by employing "*barg*" or "social class", respectively.

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[1] The following discussion refers to the period up to 1974.

[2] MA 2022: p. 221f.

[3] MA 2022: p. 211-220.

[4] Among the higher Hindu castes, *kul* denotes a patrilineal descent group which includes the wives "married in" and, consequently, excludes sisters and daughters "married out".

[5] Cf. MA 2022: p. 216 § 10, p. 223f. § 1, 8-10.

The regulations dealing with incest well illustrate the new MA's attitude towards minorities: The legislator defines on two full pages what has to be regarded as incestuous relations. Then, in one single paragraph he adds that those relatives with whom sexual intercourse and marriage are in accordance with one's group's traditions *(āphnā jāt wā kulmā calī āeko calan anusār wiwāha wā karaṇi garna hune nātā)*, are exempted from the regulations as given above.[6] Thus, deviations from the norm are legal if they can be regarded as part of group-specific traditions.

The primacy of Hinduism remains unquestioned, and the killing of a cow is punishable with imprisonment of up to twelve years.[7] The conversion of a Hindu to another religion is called *khalal*, 'disturbance'. The same term is employed in another context: Whoever disturbs somebody else forcibly or by deception *(jhukyāi)*, whilst practising his traditional customs *(sāmājik ritisthiti)*, is liable to be imprisoned for up to one year.[8] Here the legislator principally follows the line of the MA of Jaṅg Bahādur, ultimately postulating what he has officially ceased to recognise: the caste hierarchy. With these provisions the legislation at least confirms the separation of castes, in as much as any attempt to change the interrelations hitherto prevailing between two or more castes can be interpreted and sued as a disturbance of traditional customs.[9]

Contrary to the wide-spread view, modern legislation has not explicitly abolished the caste hierarchy. Although there is no longer an inequality before the law, based on caste affiliation, the system of relations constituting the caste hierarchy remains unchanged and is tacitly sanctioned by the provisions quoted above. As late as 1963, after the publication of the new MA, the Palace Secretariate declared that the "caste system itself has not been abolished".[10] Ethnographic literature, too, sufficiently proves that the castes have remained a social reality, in spite of a certain slackening in the field of interrelations. Among others, Putnam illustrates this in a particularly striking manner in his study dealing with every-day life in "a tea-shop as an arena of ethnic interaction".[11]

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[6] MA 2022: p. 216 § 10.

[7] What is more, it is a punishable act to sell cows, oxen and bulls for slaughter into other countries (MA 2022: p. 190f. § 1, 3, 10-11).—In the Constitution of 1959, the king of Nepal is qualified as an "adherent of Aryan culture and Hindu religion" (Neupane 1969: 88). The 1967 Constitution (p. 2 § 3/1) calls Nepal a "monarchical Hindu State". (Quoted from official translations.)

[8] MA 2022: p. 224 § 10. Cf. also above p. 134f.

[9] A systematic analysis of modern law practice in Nepal has still to he made. My perusal of court records in Dhādiṅ, Central Nepal, in 1971 brought no lawsuits in caste affairs to light. Later I was informed of a case in which a projected inter-caste marriage was obstructed by the relatives by reference to the paragraphs quoted above. As is well-known, in the early sixties the Untouchables were prevented by the police from entering the national sanctuary Paśupatināth (cf. Joshi and Rose 1966: 747).

[10] Joshi and Rose 1966: 474, italics mine.—In modern Indian legislation, caste is dealt with more or less as a sect or denomination, the affiliation to which is voluntary. As such, castes are protected by the law. Their status position is, however, not acknowledged. A caste may own and manage property, sue in court and, with some restrictions, outcast its members. The so-called "sched-

Nepal is on the verge of a social transformation, regardless of whether it will be enhanced by a rapid economic change or precisely by its absence. The caste hierarchy consolidated by the various editions of the MA between 1854 and 1955 guaranteed the lower castes at least a "justice outside equality".[12] It has left behind a social inequality which can still be intensified by both economic progress or involution. The question is to what extent can modern legislation further the emancipation of the underprivileged. The case of the Untouchables exemplifies the problems involved.

The Untouchables

As Caplan and others show, the growing monetisation has had a positive effect at least for some of the Untouchables in the rural areas. The same seems to be true of those, especially Newār, Untouchables who now work as employees of the public administration, even though on the lowest pay-scale. But the loosening of their economic dependence upon higher castes has not brought about any substantial change in their traditional caste status. In the case of the Newār just mentioned one may speak of a "hidden untouchability" for these groups still exercise their traditional occupation or, at least, do works which are traditionally associated with impurity, such as scavenging, cleaning or the disposal of corpses in the hospitals, etc.

Politically, the Untouchables (and low castes in general) are heavily underrepresented at the national level.[13] The same is true of the district administration: in 1975, not one single Untouchable was found among the district *pañcāyat* chairmen and vice-chairmen.[14] This is deplorable given the fact that the Untouchables may well represent about 15 per cent of the total population. By contrast, their political participation at the village level has considerably increased since 1960, at least in some areas.[15] But as Caplan points out, they cannot constitute an effective political force until a new field of economic competition is opened up for them; and to improve their economic position by a suitable resource re-allocation is not possible without aid from outside.[16]

The State's policy has indeed been too reluctant to remove two principal ob-

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uled castes" and "scheduled tribes" benefit from a special protective legislation. Cf. Galanter 1968 on caste in general and Galanter 1972, Dushkin 1972: 165-186 on "positive discrimination".

[11] Putnam 1975.

[12] "justice en dehors de l'égalité", as Dumont (1966: 139) puts it.

[13] Cf. Gaige 1975: 164.

[14] According to the official list.

[15] Cf. Gaige 1975: 143-144, Caplan 1972: 58ff.

[16] Caplan 1972: 85-96.

stacles to the Untouchables' vertical integration into Nepalese society: a) The one is the so-called anticommunalism *(asāṁpradāyiktā)*, a policy directed against any organisational solidarisation of minorities on a cultural or regional basis. The Nepal Depressed Classes League created "from above" a few years ago might be seen as an experimental deviation from this policy, but this organisation has so far not proved active enough to fully represent the Untouchables' interests.[17] b) The second obstacle is the lack of any decisive protective legislation. Unlike India's Constitution and, particularly, the Untouchability Offences Act of 1955, Nepal has denied any "positive discrimination" to the Untouchables.[18]

In the Nāgrik Adhikār Ain of BS 2012 (AD 1955), discrimination *(bhedbhāw)* on the basis of religion, race, sex, caste and tribe *(dharma, warṇa, liṅga, jāt, jāti)* is only prohibited with reference to the employment in public service.[19] The Constitutions of 1959 and 1967 add a clause prohibiting discrimination in general, that is, "discrimination in the application of law" in accordance with the right to equal protection by the law for all citizens.[20]

In fact, the law is not free from ambiguities. First, it does not provide any precise definition of "discrimination in the application of the law". Second, the clauses prohibiting discrimination may be seen as contradicted by those which assure the social groups (castes) the right to self-determination with regard to their religion, customs and social intercourse with other groups.[21] What is discrimination for X can be a threat for Y to his tradition and customs. If, say, an Untouchable enters a cult place which has so far been used by Brahmins only, the act can be interpreted as an infringement of the Brahmins' religion and customs. What is more, both can be punished, the Untouchable who tries to make use of the abolition of discrimination (as he conceives of it) as well as the Brahmin who, led by good will, helps the Untouchable in exercising his right. Similarly, although in modern Nepalese law regulating marriage no mention is made of caste barriers,[22] the protection of one's own group's traditions could also serve as a sanction against intermarriage between Untouchables and non-Untouchables.

Though increasingly hesitating, Nepalese law still holds open the door for a "positive discrimination". Thus, the Interim Government of Nepal Act of 1951 (BS 2007) stipulates the Government's right to make "any provision for the reservation of appointments or posts in favour of any backward class of citizens".[23] A few years later, this was reduced to the formulation that His Majesty's Government shall have the power "to make special provisions *(biśeṣ wyawasthā)* for women, children and persons belonging to any backward classes of citizens".[24] Here again, the notion of "backward class" is not sufficiently defined, and the initiative is left entirely to the executive. In the Constitution of 1967, this is formulated even more vaguely: "Laws may be made for the sake of public good to regulate and control the exercise of fundamental rights [...] for the maintenance of good relations among people of different classes or professions"; among those to be protected only minors and women are specifically mentioned.[25]

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[17] It must be acknowledged, however, that the leaders of this organisation (now called "Nepal National Depressed Class Welfare Council") do not fail to criticise in their public speeches the contradiction between the law and the still existing discrimination of low castes (cf., e.g., The Rising Nepal, August 18th, 1974; November 22nd, 1974; and December 16th, 1974).

[18] For an analysis of the Indian legislation cf. Galanter 1974 and Kloss 1969: 385-419.

[19] Nepāl Ain Saṁgraha 2021: p. 1221 § 4.

[20] Neupane 1969: 91; Constitution 1967: p. 5 § 10.

[21] Nepāl Ain Saṁgraha 2021: p. 1221 § 7; Muluki Ain 2022: p. 224 § 10; Constitution 1967: p. 6 § 14.

[22] Muluki Ain 2022: 218-220.

[23] Neupane 1969: 147 § 16/2.

To sum up, it is, paradoxically, for fear of national disintegration that the integration of the Untouchables is being adjourned. The legislator appears to have been guided by the hope of leaping over one stage in the transformation of Nepalese society, namely that stage, which in India was (and still is) characterised by a series of conflicts produced by voluntaristic cultural change (mass conversions to Buddhism, "Sanskritisation", etc) and by the struggle for political participation.[26] The legislator's indecisiveness with regard to caste and untouchability, one may conclude, should allow for a gradual emancipation of the Untouchables. This is to take place in the future and, so to speak, outside the ideological categories of the traditional caste hierarchy which will by then have lost its relevance.[27]

The outcome of such a policy can only be, at best, a certain amount of individual mobility, that is, emancipation for a few privileged persons and thus at the cost of the horizontal solidarity among the Untouchables as a social group. Moreover, it is doubtful whether the caste hierarchy will "die out" within the near future, even if one postulates a fast economic transformation in the country. It is true that in India, "positive discrimination" has also had a certain cementing effect upon the caste hierarchy,[28] but the absence of any protective legislation cannot be a remedy either.

With all that it is obvious that conditions in Nepal are comparatively more favourable. Contrary to India, neither large-scale proletarisation nor social unrest has so far taken place among the Untouchables in Nepal. Last but not least, an energetic social reform could continue the Nepalese legal tradition which has always assigned to the State an important role in regulating social life.

The ethnic groups

It has to be admitted that, unlike the Untouchables, a) not all the ethnic groups have suffered deprivation to the same extent and that they b) could benefit from those general reforms which, since 1951, have been implemented in favour of the entire peasantry, such as the land reform, the expansion of primary education and the establishing of the village *pañcāyat* as local units of self-government.[29] It is precisely these two factors which make the situation of the ethnic groups more complex and more delicate than that of the Untouchables.

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[24] Civil Liberties Act 1955: p. 2 § 5; Nepāl Ain Saṁgraha 2021: p. 1221 § 5.

[25] Constitution 1967: p. 7 § 17.

[26] Cf., i.a., Béteille 1967: 92-98 and Bhatt 1971.

[27] King Mahendra emphasised as early as 1964: "Care has also been taken to render the new Muluki Ain [...] easily acceptable to the people to prevent social revolution from bringing about social disorder and to effect changes as smoothly as possible [...]" (Mahendra 1967: 235).

[28] Béteille 1967: 90, 92.

On the whole, anticommunalism and attentism have not allowed for the elimination of the consequences of exploitation and political deprivation to which the ethnic groups have been exposed since the foundation of the present State of Nepal, and especially during the Rāṇā period. The documentary evidence for the first time made accessible by M.C. Regmi amply proves this.[30] The claim of the patrimonial kingdom that the whole land is state property, also served as a pretext to allow members of higher castes (courtsmen, civil servants, military personnel, etc) to settle on "tribal territory". The bulk of the ethnic groups were, especially by the bestowal of *birtā* and *guṭhi* rights (cf. p. 96f.), practically reduced to the status of bondsmen. Even if they cultivated *raikaṛ* land, they were bound to villainage or corvée, serving as porters, footmen and the like.[31] As we have seen, most of the slaves were also recruited from among the ethnic groups. The considerable disfranchisement, meant to favour military expansion and the establishment of a new elite, was only sanctioned by the MA of BS 1910, classifying most of the ethnic groups as "enslavable subjects" (*māsinyā prajā*).

No doubt, ecological and economic factors also reduced the opportunities of the ethnic groups. Even those who did not come under the control of the administration settled in a disadvantageous habitat. The monetisation beginning after World War I entailed a significant indebtedness. This was only partially balanced by the income of the "Gurkha" mercenaries, the abolition of *birtā* rights in 1959 and, finally, by the general land reform in 1964. The positive effects of these factors are also reduced by the present-day inflation and the growing scarcity of land.[32]

As already stated not all the ethnic groups were exposed to the same extent of deprivation. One example is offered by the Newār. The fact that many members of the higher Newār castes were educated and/or specialised in trade and handicraft allowed them to maintain their economic position and to continue to hold key-positions at court and in the civil service even after 1769.[33] The State's policy vis-à-vis the Newār has always been characterised by a certain precaution aiming at a selective integration of the high cultural heritage of this group. Symptomatic enough is the famous gesture of Prithwi Nārāyaṇ Śāh who, on having conquered Kāṭhmāṇḍu, sat down on the throne of his Newār predecessor, paid homage to the Newār pantheon and ordered a feast which was in progress at the time to be continued.[34] This formed the prologue to a strategy which Sylvain Lévi called "cultural annexation".[35] Its objective was an integration by subordination rather than oppression, in so far as the original identity of the Newār culture was gradually lost, precisely because many of the Newār sanctuaries were incorporated into the state cult introduced by the new dynasty. As the Newār castes were integrated into the new superimposed "national" hierarchy, the ethnic identity of the Newār became re-interpreted by their discontinuous allotment to the different caste groups (see pp. 111ff.). Whereas the individual Newār castes, with their specific customs, were protected by the law, a solidarisation of all Newār on the basis of their ethnic identity was prevented. Under the Rāṇā rule, the cultivation of their language and literature was curbed by administrative intervention.[36] This tendency outlived the 1951 anti-Rāṇā revolution, and only in the last few years is a cautious liberalisation to be observed.[37]

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[29] On the minorities in the Terai cf. Gaige 1975; on the effects of schooling and resettlement cf. Ragsdale 1975 and Elder 1976: 104-129, to mention just a few.

[30] Regmi 1965-1968; Regmi 1971; Regmi 1976.

[31] In the pre-Rāṇā period, *raikaṛ* cultivators were considered to be a sort of state tenants having only occupancy rights. Cf. Regmi 1976: 170ff.

[32] As to the legislative framework of these reforms, cf. Birtā Unmulan Ain, in: Nepāl Ain Saṁgraha 2021: p. 687ff.; Bhumi Sambandhi Ain, in: Nepāl Ain Saṁgraha 2021: p. 674ff. For a critical analysis of the land reform cf. Regmi 1976: 197-231 and Zaman 1973.

[33] According to Chauhan (1971: 233), in the late sixties approximately 25 per cent of the higher civil servants were Newār, beside 46 per cent Parbatiya Brahmins, 23 per cent Chetri (apparently the Ṭhakuri included) and altogether not more than 5 per cent from among other ethnic groups and Terai castes. Gaige (1975: 166f.) discloses a similar tendency; cf. also Shaha 1975: 57.

Whereas most of the ethnic groups are strongly underrepresented in the regional and national decision-making bodies, their political participation in local self-government has increased considerably. This is due to the establishment of village councils *(gāũ pañcāyat)* in the early sixties. As these councils are elected by secret ballot, their impact on the formation of public will and opinion in the rural areas cannot be disregarded. Furthermore, as they usually comprise a number of settlements, the councils are in a position to encourage interaction among different ethnic groups and castes in areas with heterogeneous populations.[38] Whereas this was only a long-term side-effect of the administrative reform, the establishment of the Remote Area and Local Development Department of His Majesty's Government in the late sixties may be viewed as the first step taken in favour of the ethnic groups in the border areas. It was this department which, in 1974, organised a "Know-Nepal-Programme", inviting prominent lamas from remote regions to assemble in Kāṭhmāṇḍu.[39]

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[34] Cf. Hasrat 1970: 91 and Lévi 1905, I: 54.

[35] Lévi 1905, I: 28. The expression is used here in another context.—On the documentary evidence of the Śāh dynasty's attitude towards the Newār pantheon cf. Wajrācārya 2033: 262ff.; Wajrācārya and Śreṣṭha 2032: 109-115; Gorkhā Waṁśāwali, II: 13ff.

[36] Cf. Lienhard 1974: 125.

[37] In 1965, the radio broadcasts in Newari and Hindi were discontinued after several years of being freely transmitted. Cf. Gaige 1975: 125.

[38] On the legislative framework cf. Nepāl Ain Saṁgraha 2021: p. 97ff.; Kaphley 1967; Joshi and Rose 1966: 395ff. On the practical consequences of the councils cf. Rana and Mohsin 1967; Caplan 1970: 163ff.; Höfer 1973 a; Borgström 1975 and Knall 1975.

[39] The Rising Nepal, December 6th, 1974.

The legacy of the past

It has repeatedly been stated that many developing countries have, in favour of their nation-building, discarded the legal pluralism which had characterised the preceding colonial era.[40] If Nepal, too, exhibits such a tendency, paradoxically it does so precisely because it has not been a colony and because it has been faced with the problem of national identity ever since 1769. Attentism in legislation and anticommunalistic tendencies must be seen in connection with a policy pursued since those days and which L.E. Rose calls "a strategy for survival".[41] Nation-building is meant to guarantee the country's autonomy and to delineate Nepal from her neighbour India, from which she cannot be distinguished so easily, as far as objective criteria such as language and culture are concerned. Rose maintains that this identity problem did not become pressing before India's independence.[42] Be that as it may, we have shown that the problem was already posed in the Muluki Ain of Jaṅg Bahādur one century earlier. There is one fundamental difference, however. In the MA, the conspicuous indifference towards most of the ethnic groups was justifiable by ignorance and by the unchallenged political dominance of the higher Hindu castes. Nowadays, however, indifference towards the minorities threatens, at least in the long run, national unity. The MA "accommodated" the nation's diversity into a caste hierarchy, legitimating social inequality as being in line with *dharma*. Present-day legislation, by contrast, proceeds from the fiction that this diversity implies only differences in the fields of custom and religion.[43]

Modern legislation simply denies inequality, at least in so far as it results from group affiliation. (Only individual mobility is enhanced and, as we have seen, even this is done by applying undefined criteria.) It goes without saying that modern Nepalese law is not prepared to legitimate inequality. The abolition of inequality, however, is not legitimated decisively enough by it, either. This is precisely why it seems to be inappropriate as an instrument of national integration.

Since King Birendra's accession to the throne, increasing attention has been paid to the minority problem. For the time being, however, the efforts are only political decisions and administrative measures not based on law which would ensure their continuity. On the other hand, it cannot be excluded that the success of the reforms of the past two decades will intensify political consciousness among the ethnic groups, the Untouchables and other minorities. The possible conflicts will put legislation under pressure. At least a protective legislation initiated "from above", which could have been effected until now, will then be hardly realisable.

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[40] Nader and Yngvesson 1973: 905.

[41] Rose 1971.

[42] Rose 1977: 221.

[43] There is even a minority of traditionally oriented intellectuals who derive from their own fiction of national unity the claim to a sort of "Sanskritisation" of the whole nation. In 1974, e.g., a number of Members of Parliament raised the claim for a general prohibition of alcohol throughout the country (!), although alcohol even plays a deep-rooted part in the rites practised by a considerable portion of the population. Cf. The Rising Nepal, August 22nd, 1974.—On the reaction of the Westernised intellectuals of the country cf., i.a., Gurung 1970 and Rana 1971.

The fact that nearly one half of Nepal's population, namely 5.5 million people, can be classified as belonging to minorities,[44] may illustrate the problems with which the nation-building is faced.

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[44] According to the Population Census of 1971, only six million persons speak Nepali as their mother tongue.

CONCLUSION

The caste hierarchy of the MA is a linear conception. An exceptional position is occupied by the Muslims (chapter XIII). The MA, thus, clearly falsifies the thesis holding that, at least in India, regional and supra-regional caste hierarchies with clear-cut rankings were an artificial creation of the compilers of the Census of India.[1] In the MA's society, caste constitutes the primary organising principle; caste status is, indeed, the chief factor determining an individual's juridical status; and the relationship between individuals is to a large extent determined by the purity-conditioned status. Caste "interferes" in marriage, inheritance, occupation; in the relationship between servant and master, between patient and healer, between the individual and the State. There seems to be only one sphere of social life which is permanently "caste-free", namely trade and commerce: Here only the material value of goods and services counts, and not the caste of the persons involved in their transaction.[2]

The caste hierarchy of the MA is divided into five caste groups. The upper three caste groups, the pure castes, are separated by a demarcation line from the lower two caste groups, the impure castes. Members of the pure castes are polluted by intercourse with those of the impure castes, that is to say, by the acceptance of water, of certain kinds of food *(bhāt)* as well as by sexual intercourse and physical contact in general. In principle, every single caste can belong to only one of the five caste groups. Those Newār, however, who, at the same time, wear the holy cord and partake of alcohol seem to be an exception to the rule (chapter XI).

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[1] Cf. Kantowsky 1972 and Rothermund 1976: 395f. This is not to deny the role of caste assemblies which represented to the Census authorities the demand of individual castes to belong to a particular *varṇa*, organising thus a "new urge to mobility" (Srinivas 1966: 94ff.). And this is not to deny, either, that, empirically speaking, other organising principles, such as kinship, territory or class, may be as fundamental as caste for our understanding of social organisation in South Asia (cf. Hazlehurst 1968: 38ff.).

[2] This must be emphasised in as much as, according to some classical sources, interest rates were dependent also on the *varṇa* of the borrower (cf. Manu Saṁhitā 1909: 273 and Kane 1946: 421).

Every single caste "individualises" itself through a number of specific restrictions regarding intercourse with all other castes. A conspicuous concentration of such restrictions is to be observed among the impure castes, where nearly every caste marks itself off from those which rank lower than itself. By contrast, intercourse between pure castes is dealt with somewhat more liberally: hypergamous marriages are allowed and water can be accepted mutually, regardless of status disparities between giver and receiver (chapters IV, V, VIII).

Caste status is a function of a collectively owned amount or degree of purity. Within this amount of purity there is a further gradation: Members of one and the same caste *(jāt)* can possess varying amounts of purity and can be separated from each other by the refusal of commensality. Such a differentiation of status within one caste can be attributed to certain events in the individual's life, e.g., the number of spouses a woman has had, determining her feme's status which ranges from virgo intacta to "whore".

A differentiation of status is also given in the case of subcaste-like status groups within one caste (chapters IV, V, VIII).

However, not every kind of intra-caste grouping is recognised as having more or less collective purity than other members of the caste. Thus, the MA prescribes commensality for all Guruṅg, regardless of their traditional intra-ethnic stratification (chapter XI).

For the MA, caste-specific collective purity (and therefore caste status) is not, or at least not exclusively, the result of attributes, such as a caste's occupation, diet habits, religion and customs (chapter VII).

The MA only imperfectly applies the classical *varṇa* model to the five caste groups. The expression "the four *varṇa* and the thirty-six *jāt*" is rather a metonymy for the universal hierarchy which includes all castes inside and outside Nepal (chapters IX, XII, XIII, XIV).

Caste *(jāt)* and ethnic group are not always congruent, and the MA often fails to take subjective ethnic identity into consideration when determining the status position of a group (chapter XI).

An exceptional legal status applies to the slaves and ascetics, identifying them as social estates apart. By becoming a slave, a person's caste status is partially suspended. The emancipation of a slave and the initiation to one of the ascetic sects imply the allocation of a new caste status. These two acts, along with degradation, are the only legal chances for individual status mobility (chapters X and XV).

The legislator's conspicuous attention to inter-caste relations with stress on commensality and consexuality must be seen in connection with the MA's function to integrate a great ethnical and cultural diversity into its national caste hierarchy.

In spite of the numerous instances where the MA is in accordance with the principal concepts of the classical Indian sources of law, its claim to orthodoxy remains more or less rhetoric. Although it sometimes refers to the authority of the *dharmaśāstra* and although it uses all orthodox vocabulary, the MA is in many respects remarkably pragmatic: The Brahmins are allowed to plough, some professions may be chosen regardless of one's caste; and hypergamous marriages are legalised in spite of considerable status disparities between the spouses (chapters V, IX, X, XIII, XIV).

The MA prohibits Hindus from being converted to other religions. It tolerates and safeguards customs and confessions in so far as they are part of the tradition of a group (caste). The tolerance is, just as the whole process of codification, last but not least the result of a continuous interaction between the legislator and the sections of the population concerned (chapters XIII, XIV).

Nevertheless, there are numerous discrepancies between the normative model of the law and empirical reality. This is particularly true of the middle ranks of the hierarchy, that is to say, of the ethnic groups (chapter XI, appendix I). The treatment of these groups is often very cursory and it thus leaves the way clear for a subsequent legislation, expected to acknowledge the results of acculturation by correcting previous status allocations (chapters XI, XIV). "After all, incompleteness of a codification has seldom impeded its active results."[3]

Contrary to what we know of pre-British Indian legislation, the MA sanctions a caste hierarchy in detail. Caste interrelations are codified and controlled chiefly by officeholders of the state bureaucracy. Caste autonomy is insignificant, and customary law must be sanctioned as such by the legislation (chapters XV-XVIII). Possibly this tendency is to be traced back to a specific Nepalese tradition emerging with Jayasthiti Malla's code and actualised, in the MA, by the necessity of consolidating the results of the state foundation. The cultural demarcation from the outside world is an instrument for stressing Nepal's identity (chapter XII). One is tempted to see in this demarcation two ideas interpenetrating each other, namely the old Indian concept of the pure country of the Aryans (Āryavarta or Bhāratavarṣa) as opposed to the countries of the Mleccha, on the one hand, and the idea of the modern national state, on the other.

Purification, penance and penalty are closely interrelated and in most cases they have cumulative effects. Pollution is not subject to a determinism and can almost always be rescinded if it was contracted without guilt, that is, unknowingly.

In modern legislation, the caste hierarchy is no longer recognised, even though not explicitly abolished, either. As a "positive discrimination" is denied to the hitherto underprivileged groups, the law, with its attentism, can only cope to a limited extent with the heritage of the preceding legislation as a "stratification lag"[4] (chapter XIX).

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[3] Wieacker 1952: 209.

[4] Dahrendorf 1974: 39.

APPENDIX I

THE POSITION OF THE TĀMĀṄG WITHIN THE CASTE HIERARCHY: A LOCAL EXAMPLE

The following data are based on my own field work among a Tāmāṅg group in the Dhādiṅg district in Central Nepal.

The Tāmāṅg language has no proper term for 'caste' or 'untouchable' and only uses Nepali loan words. The word *jāt* (Tāmāṅg *jạ:t*) can, moreover, also mean 'exogamous clan'.[1]

Regarding the subjective judgement of the position of the Tāmāṅg in the national hierarchy, the statements vary from informant to informant. Even the regional or supralocal hierarchy of the castes living in the neighbourhood of the Tāmāṅg is not based on general consensus. The only thing which is agreed on is that the Brahmins are the "highest" caste and the Tāmāṅg a "lower" one. The precise linear sequence of the individual castes, however, is either unknown or viewed differently.[2] Those Tāmāṅg who are versed in the matter refer to the regulations of the older editions of the MA; at the same time they emphasise the deviations from the law to be observed in practice.

Especially the allocation of the ethnic groups, such as the Guruṅg, Ghale, Magar, etc, is subject to dispute. For instance, some Tāmāṅg believe (contrary to the MA) the Guruṅg to rank lower than the Tāmāṅg. Other informants view the Guruṅg and the Tāmāṅg as equal-ranking. In sum, the linear rank order of castes is of minor importance for the Tāmāṅg.

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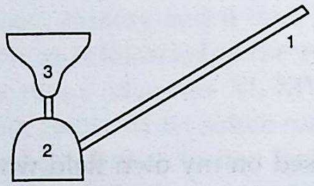
[1] The Tāmāṅg term *rlụ:* (< Tibetan *rus-pa*) for 'clan' is more or less obsolete.

[2] This is not uncommon in other regions. Stone (1977: 105) reports on a local hierarchy in the Trisuli area that "Jaisi, Chetri and Thakuri each see themselves as directly below the Brahmans and will not accept boiled rice from each other. Similarly, those of the matwali group [...] each see themselves as highest of that category". Examples of disputed status are thus in no way limited to contexts in which ethnically heterogeneous groups are confronted with each other. According to Bista (1972 a: 21), orthodox Chetri refuse to accept *bhāt* even from the Kumāi, a subdivision of the Upādhyaya Brāhmaṇ, because from their viewpoint the Kumāi rank lower than themselves.

An intersubjectively valid and therefore more reliable criterion is offered by the interrelations between the Tāmāṅg and the other castes. These interrelations are more or less uniform, established attitudes based on mutual consent—at least in the local context to be dealt with here. This will be proved in the light of three examples: the sharing of the hookah, the acceptance of *bhāt* and water, and intercaste marriages.

The hookah

The following rules have to be respected while sharing the hookah of a Tāmāṅg:



—All other Tāmāṅg use the hookah of a Tāmāṅg with all its three components: the bowl (3) containing the tobacco, the urn containing water (2) and the tube (1). The tube with the mouthpiece is passed from mouth to mouth. (Only few people wipe the mouthpiece swiftly with their hands before putting it into the mouth.)

—The Guruṅg, Ghale and Magar as well as those Tāmāṅg women who have been married to a Guruṅg, Ghale or Magar husband remove the tube (1) and smoke through the orifice on the side of the urn (2).

—The Brahmins, Ṭhakuri, Chetri and the Hill Newār only accept the bowl (3) and smoke by forming a 'tube' with their hands, connecting the neck of the bowl with the smoker's mouth. A Brahmin uses in addition a sort of insulating layer, wrapping a leaf of the *sāl* tree around the neck of the bowl on to which he places his hand.[3]

Untouchables (Kāmi, Sārki, Damāi) are not allowed to touch a Tāmāṅg's hookah and even its bowl.

The sharing of the hookah thus indicates four configurations of rank, namely
—Brahmins, Ṭhakuri, Chetri, Newār (the bowl only);
—Guruṅg, Ghale, Magar as well as their Tāmāṅg wives (bowl and urn);
—Tāmāṅg themselves (the whole hookah);
—Untouchables (no sharing).

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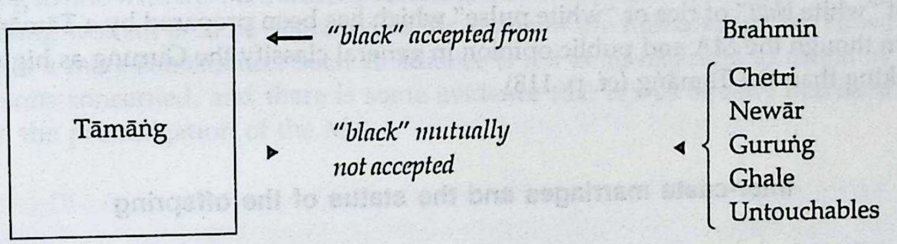
[3] The rule is applicable vice versa if a Tāmāṅg uses the hookah of a non-Tāmāṅg. From a Brahmin's hookah, e.g., he will only be permitted to use the bowl, etc.

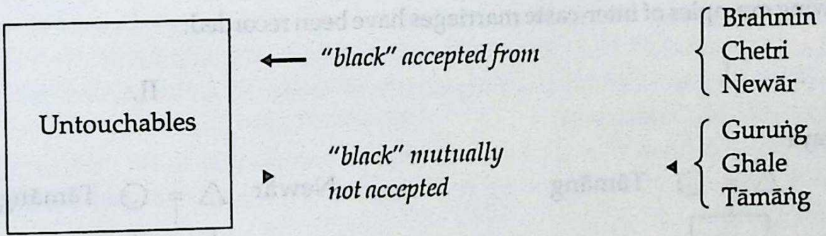
Water and *bhāt*

In principle, but not in detail, the acceptance of water and *bhāt* is in accordance with the regulations laid down by the MA. Thus, a Brahmin or a Chetri accepts boiled rice from a Tāmāṅg's hand only if some clarified butter has been added to it as a purifier (cf. above p. 22). However, there are two categories of food which are not specified in the MA in connection with the acceptance rules, but which do play a significant role in the relations the Tāmāṅg maintain with other castes: millet pap and dark pulse.

Because of their colour both are called "black": *kālo bhāt* (Nepali) or *ken mlàṅ* (Tāmāṅg) for 'millet pap' and *kālo dāl* (Nepali) or *dạ:l mlàṅ* (Tāmāṅg) for 'dark pulse'. Rice (boiled) is called *seto bhāt* (Nep.) or *ken tar* (Tām.), i.e., 'white *bhāt*'.

The acceptance of "black food" is based on the following rules:


Tāmāṅg
"black" accepted from
Brahmin
"black" mutually not accepted
Chetri
Newār
Guruṅg
Ghale
Untouchables


Untouchables
"black" accepted from
Brahmin
Chetri
Newār
"black" mutually not accepted
Guruṅg
Ghale
Tāmāṅg

We see that "black food" is not mutually accepted between the Tāmāṅg, on the one hand, and the Chetri, Guruṅg, Ghale, Newār and Untouchables (!), on the other. The Tāmāṅg only accept it from the Brahmins, whereas the Untouchables accept it only from the Brahmins, Chetri and Newār.[4]

Whereas "white *bhāt*" (rice) is accepted unilaterally from the higher-ranking person, in the case of "black food" there is a negative reciprocity. To be more precise, except for two cases, the refusal to accept "black food" is mutual and independent of the status disparity between receiver and giver. Even the Untouchables reject "black food" offered by a Tāmāṅg or a Guruṅg.[5] With all caution, it may be concluded that the acceptance rules regarding "black food" contradict one of the most important structural principles characterising the hierarchy of the MA: the unilaterality of *bhāt* acceptance in the direction of the next lower-ranking caste (cf. p. 22). The positive reciprocity of mutual water acceptance among the pure castes has, as it seems, its parallel in the negative reciprocity of mutual refusal to accept "black food".

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[4] The Brahmins, Chetri and Newār do not partake of millet pap at all, but only of dark pulse. The Guruṅg and Ghale eat both "black *bhāt*" and "black pulse", but only if they have prepared it themselves.

[5] The latter information was given by the Kāmi blacksmiths who are unhesitatingly ready to accept "white food" from their Tāmāṅg customers.

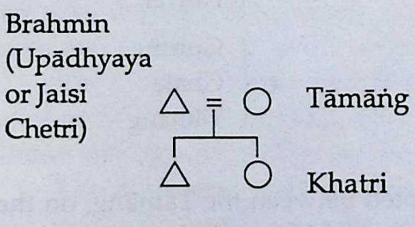
However, there is one fact interpretable as a sort of concession to unilaterality. That is, the Tāmāṅg do accept "black food" from the Guruṅg and Newār provided that it is offered together with some "white food", in most cases rice. The informants substantiate this fact by stating that "it then does not look so black".

Moreover, it must be added that unilaterality, as prescribed by the MA, is not fully effective in the local hierarchy under discussion here. Whereas the Newār (Hill Newār) never accept "white food" from the Tāmāṅg (the Tāmāṅg, in their turn, do accept it from the Newār), the Tāmāṅg, Guruṅg and Ghale are practically commensal. Only few, particularly caste-conscious Guruṅg or Ghale refuse to accept "white *bhāt*" of rice or "white pulse" which has been prepared by a Tāmāṅg,[6] even though the MA and public opinion in general classify the Guruṅg as higher-ranking than the Tāmāṅg (cf. p. 118).

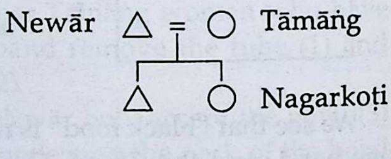
Inter-caste marriages and the status of the offspring

The following examples of inter-caste marriages have been recorded:

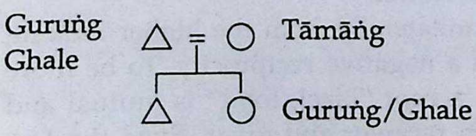
I.



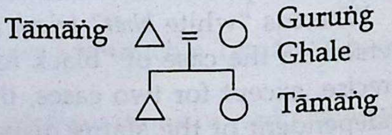
II.



III.



IV.



Case I shows conformity with the MA's regulations. In case II, only a terminological deviation strikes the eye for, according to the MA, the offspring are to be classified as Lawaṭ (cf. p. 116). In both cases, the status of the children is determined not only by the father but also by the mother.

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[6] Similarly Toffin (1975: 335) on the situation in the upper Ākhu Kholā Valley.

Cases III and IV are different. Here the children adopt their father's caste status as well as his clan affiliation: they are Guruṅg, Ghale and Tāmāṅg, respectively. Moreover, case IV is a hypogamous marriage prohibited by the MA (cf. p. 35).

In cases III and IV, even the wife/mother is integrated into the ethnic group of her husband since, when she dies, her death rites will be performed by her husband's relatives and by the ritual specialists of his ethnic group. Other indications of the wife's integration into the husband's ethnic group are to be seen a) in the fact that the Tāmāṅg woman in case III is excluded from the ancestor worship in her parental home; and b) in the aforesaid attitude towards her with regard to the sharing of the hookah.

Certainly, in case IV, the integration of a Guruṅg or Ghale woman into the ethnic group of the Tāmāṅg could also be interpreted as a sort of degradation being in line with the MA, which prescribes that in hypogamous unions, the higher-ranking woman is to be degraded to the status of the husband (p. 39). However, this is a mere coincidence. Such an alliance is not at all regarded as illegal by the persons concerned, and there is some evidence that it was already practised before the promulgation of the MA.

APPENDIX II

THE KILLING OF THE COW

The killing of a cow is called *gowadh*. In the relevant provision of the MA, frequently only the cow, *gāi*, is specifically mentioned, but it is obvious that the protection is also extended to bulls and oxen. The following concise rendering of several paragraphs draws from the chapter *gowadh garnyā* in the MA.[1]

§ 1: If a cow has been killed with intent, the offender is to be punished with *dāmal* (life-imprisonment).

§ 2: Whoever injures a cow deliberately with a weapon, is to be punished by confiscating his property or by reducing him to slavery, according to his caste group.

§ 3: Whoever kills a cow unintentionally when driving the animal to pasture, etc, obtains absolution *(prāyaścit)* after paying a fine of Re 1.

§ 5: Whoever witnesses the killing of a cow and fails to report it to the authorities, is fined Rs 50.

§ 6: Whoever beats a cow until it bleeds is to be fined Rs 2. If the cow's or water buffalo's leg is broken,[2] the fine amounts to Rs 10.

§ 7: If someone killed a cow with intent and is thereupon killed himself, his murderer will not be punished *(khat lāgdaina)*. However, he will be punishable as an ordinary murderer if it is proved that the killer of the cow acted unintentionally.

§ 8: Exempt from punishment is an injury of a sick cow, necessitated by an operation: sawing off the horns, removal of insects from a wound, etc.

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[1] MA pp. 296-298.

[2] Nevertheless, buffaloes seem to form a category apart and are not given the same protection as the cow.

§ 13: If a cow tied up in the cow-shed perishes due to an illness or accident, such as lightning, fire or attack by a leopard, its owner obtains *patiyā* after payment of a fee.

§ 14: An imbecile person *(wolna najāṁnyā lāṭā)* who injures a cow with a weapon, a stick or by throwing stones at it, obtains absolution after receiving ten lashes of the whip.

* * *

The following regulation is also of some interest because it is in striking contrast to normal practice:

§ 10: Except for certain holidays and particular occasions, in the course of which, following old traditions, animal sacrifices must be performed, the members of the four *warṇa* and thirty-six *jāt* should not kill animals nor hunt nor fish *(sthal sikār jal sikār nagarnu)*. In the case of an infringement the measure of punishment (fine?) varies with the price of the animal killed.—The consumption of stale *(bāsi)* meat and fish is not punishable.

Here, the MA is in line with Manu who allows the killing of animals only in connection with sacrifices as well as for ceremonial entertainment *(madhuparka)*.[3]

The MA also prohibits the slaughter of healthy female animals, such as she-buffaloes, she-goats, sows and sheep, irrespective of whether they are slaughtered for sacrifices, consumption or sale. However, the slaughter of sick animals, except for the cow, is not punishable.[4]

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[3] Kane 1974: 778f.

[4] MA p. 325f. § 14-17, 20.

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The Muluki Ain of 1854, the subject of András Höfer's study, is a document of great historical, legal and cultural interest for scholars on Nepal. For nearly a hundred years since it was first promulgated in the mid-19th century, it remained in force as the prime law of the land ... It was the epitome of orthodox Hindu values, and given to protecting the pre-1951 political order of Nepal as well as the social and religious values it stood for.

Barring a couple of articles in the 1960s and the 70s, which amounted to no more than scratching its surface, no scholar before Höfer had turned his attention to tap the wealth of social and cultural material contained in the Muluki Ain in an exhaustive manner. Höfer's book is the first-ever attempt by anyone to study the 'anthropology of caste' in Nepal, basing on a written legal document and digressing from the usual field-derived 'village study' method of an ethnographer. In fact, the prospect of cracking a jumble of a document running to over 700 printed pages, using an old form of Nepali language and unfamiliar administrative and legal terms of a bygone century, was a daunting task to undertake. It is obvious that no one else has studied the Muluki Ain either before or since Höfer at such length and in such depth. This alone is enough to make the present book a landmark research with whose help alone we are able to know the structure of the macro-Nepali society of 19th-century vintage, its legacy running down to our own times still very strongly in many respects.

—From the 'Introduction'

ISBN 99933 43 58 7

9 789993 343585

Himal Books Classics